## AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

<table>
<thead>
<tr>
<th>1. CONTRACT ID CODE</th>
<th>PAGE OF PAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>M1246</td>
<td>1</td>
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<table>
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<tr>
<th>2. AMENDMENT/MODIFICATION NO.</th>
<th>3. EFFECTIVE DATE</th>
<th>4. REQUISITION/PURCHASE REQ. NO.</th>
<th>5. PROJECT NO. (If applicable)</th>
<th>6. ISSUED BY CODE</th>
<th>7. ADMINISTERED BY (If other than Item 6) CODE</th>
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<tr>
<td>M1246</td>
<td>12/12/2019</td>
<td>N/A</td>
<td>N/A</td>
<td>U.S. Department of Energy</td>
<td>Pacific Northwest Site Office</td>
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<table>
<thead>
<tr>
<th>8. NAME AND ADDRESS OF CONTRACTOR</th>
<th>(No., street, county, State and ZIP code)</th>
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</thead>
<tbody>
<tr>
<td>Battelle Memorial Institute</td>
<td>Pacific Northwest Division</td>
</tr>
<tr>
<td>Richland, Benton County, WA</td>
<td>99352</td>
</tr>
<tr>
<td>DUNS # 032987476</td>
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<table>
<thead>
<tr>
<th>9A. AMENDMENT OF SOLICITATION NO.</th>
<th>9B. DATED (SEE ITEM 11)</th>
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<tbody>
<tr>
<td>N/A</td>
<td>December 30, 1964</td>
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<table>
<thead>
<tr>
<th>10A. MODIFICATION OF CONTRACT/ORDER NO.</th>
<th>10B. DATED (SEE ITEM 13)</th>
</tr>
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<tbody>
<tr>
<td>DE-AC05-76RL01830</td>
<td>December 30, 1964</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11. THIS ITEM APPLIES TO AMENDMENTS OF SOLICITATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 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 ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE DATE AND HOUR 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 amendment and is received prior to the opening hour and date specified.</td>
</tr>
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<table>
<thead>
<tr>
<th>12. ACCOUNTING AND APPROPRIATION DATA (If required)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS SET FORTH IN ITEM 14.</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 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.</td>
</tr>
<tr>
<td>☐ B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO AUTHORITY OF FAR 43.103(b).</td>
</tr>
<tr>
<td>☒ C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF: The mutual agreement of the parties for work within the scope of the contract</td>
</tr>
<tr>
<td>☐ D. OTHER (Specify type of modification and authority)</td>
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</table>

<table>
<thead>
<tr>
<th>14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)</th>
</tr>
</thead>
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This bilateral contract modification incorporates changes to Part I, Section F, Section G, Section H, Section I and Part III, Section J, List of Attachments – Appendix B and Appendix E (See Continuation Pages for the purpose of this modification).

<table>
<thead>
<tr>
<th>15A. NAME AND TITLE OF SIGNER (Type or print)</th>
<th>16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dana M. Storms</td>
<td>Melanie P. Fletcher</td>
</tr>
<tr>
<td>Prime Contract Manager</td>
<td>Contracting Officer</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15B. CONTRACTOR/OFFEROR</th>
<th>15C. DATE SIGNED</th>
</tr>
</thead>
<tbody>
<tr>
<td>BY Dana Storms (signature on file) Signature of person authorized to sign</td>
<td>12/12/2019</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>16B. UNITED STATES OF AMERICA</th>
<th>16C. DATE SIGNED</th>
</tr>
</thead>
<tbody>
<tr>
<td>BY Melanie Fletcher (signature on file) On File (Signature of Contracting Officer)</td>
<td>12/12/2019</td>
</tr>
</tbody>
</table>
1.0 **Purpose of Modification:**

The Department of Energy (DOE), Office of Science (SC), Pacific Northwest Site Office (PNSO) is modifying Contract No. DE-AC05-76RL01830 (Contract) to update Section F, Section G, Section H, Section I, and Section J to the most current form as described in this Modification. The Contract shall be amended as described in this Modification to accomplish the following:

1. Revise Part I, Section F, Deliveries or Performance, Table of Contents to conform to the content provided in this Modification.

2. Revise Part I, Section F, Deliveries or Performance, to be incorporated into the Contract in its most current form.

3. Revise Part I, Section G, Contract Administration Data, Table of Contents to conform to the content provided in this Modification.

4. Revise Part I, Section G, Contract Administration Data, to be incorporated into the Contract in its most current form.

5. Revise Part I, Section H, Special Contract Requirements, Table of Contents to conform to the content provided in this Modification.


7. Revise Part II, Section I, Contract Clauses, Table of Contents to conform to the content provided in this Modification.

8. Revise Part II, Section I, Contract Clauses to be incorporated into the Contract in its most current form.

9. Revise Part III, Section J, List of Attachments, Appendix B, Special Financial Institution Account Agreement for Use with the Payments Cleared Financing Agreement to conform to the content provided in this Modification.

10. Revise Part III, Section J, List of Attachments, Appendix E, Standards of Performance-Based Fee to be incorporated into the Contract in its most current form.
Part I – The Schedule

Section B

Supplies or Services and Prices/Costs

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B–4 Payment of Provisional Performance Fee ............................................................................................... 2

B–1 Designation of Work and Facilities

The Government expressly engages the Contractor to manage and perform work and services, and to manage, operate and maintain the facilities of the Department of Energy (DOE) both as described in this Contract and as designated in writing from time to time by DOE, including the utilization of information, material, funds, and other property of DOE, the collection of revenues, and the acquisition, sale or other disposal of property for DOE subject to the limitations as hereinafter set forth. The Contractor undertakes and promises to exert its best efforts to manage and perform said work and services and to manage, operate, and maintain said facilities, upon the terms and conditions herein provided and in accordance with such directions and instructions not inconsistent with this Contract which DOE may deem necessary to give to the Contractor from time to time. In the absence of applicable directions and instructions from DOE, the Contractor will use its best judgment, skill and care in all matters pertaining to the performance of this Contract.

[M1067]

B–2 Obligated Funds

The total amount of funds presently obligated by the Government with respect to this Contract is $19,740,125,143.43 (through modification A1165). Such amount may be increased or decreased
in accordance with Contract clause 970.5232-4 “Obligation of Funds.”

[M1163]

B–3 Estimated Fee Base and Total Available Performance Fees

a) The total available fee for the base contract periods are noted in Table B.1 below:

Table B.1

<table>
<thead>
<tr>
<th>Fiscal Year (FY)</th>
<th>Estimated Fee Base</th>
<th>Performance Fee Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 16</td>
<td>$892.9M</td>
<td>$12.5M</td>
</tr>
<tr>
<td>FY 17</td>
<td>$803.6M</td>
<td>$12.5M</td>
</tr>
</tbody>
</table>

b) The total available fee for the fiscal years outlined in Table B.2 shall be made available in accordance with the Section I clause, DEAR 970.5215-1, entitled, “Total Available Fee: Base Fee Amount and Performance Fee Amount (Dec 2000) Alternate II (Dec 2000) Alternate IV (DEC 2000).” The maximum performance fee for each fiscal year may be earned by the Contractor in accordance with the provisions of Section J, Appendix E entitled, “Performance Evaluation and Measurement Plan,” for the performance of the work under this Contract commencing October 1, 2017 are as follows:
Table B.2

<table>
<thead>
<tr>
<th>Fiscal Year (FY)</th>
<th>Estimated Fee Base</th>
<th>Performance Fee Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 18</td>
<td>$802.3M</td>
<td>$12.5M</td>
</tr>
<tr>
<td>FY 19</td>
<td>$811.3M</td>
<td>$12.5M</td>
</tr>
<tr>
<td>FY 20</td>
<td>$810.3M</td>
<td>$12.5M</td>
</tr>
<tr>
<td>FY 21</td>
<td>$814.3M</td>
<td>$12.5M</td>
</tr>
<tr>
<td>FY 22</td>
<td>$814.3M</td>
<td>$12.5M</td>
</tr>
</tbody>
</table>

c) At the end of each fiscal year, there shall be no adjustment in the amount of the maximum available performance 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 –
1. under the provisions of the “Changes” clause;
2. for a +/- 10 percent change in the Estimated Fee Base; or
3. the mutual agreement of the Parties that a fee adjustment is required.

[M1067]

B-4 Payment of Provisional Performance Fee

The Contractor may, subject to the approval of the Contracting Officer, be paid provisional performance fee payments consistent with the provisions of the Section I Clause entitled, “DEAR 970.5232-2 – Payments and Advances.” The Contractor shall promptly refund to the Government any amount of provisional performance fee paid that exceeds the amount of performance fee earned.

[M1067]
PART I – The Schedule

Section C

Description/Specifications/Work Statement

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C-1 Introduction

Battelle Memorial Institute, Pacific Northwest Division (the Contractor) shall, in accordance with the provisions of this Contract, accomplish the missions and programs assigned by DOE and manage and operate the Pacific Northwest National Laboratory (PNNL or the Laboratory).

PNNL is one of DOE’s Office of Science (SC) multi-program national laboratories. The Laboratory is a Federally Funded Research and Development Center (FFRDC) established in accordance with the Federal Acquisition Regulation (FAR) Part 35 and operated under this management and operating (M&O) contract, as defined in FAR 17.6 and DOE Acquisition Regulation (DEAR) 917.6.

The Laboratory supports DOE’s strategic themes in energy security, nuclear security, scientific discovery and innovation, environmental responsibility, and management excellence, in accomplishing the Department’s mission. The Laboratory mission is to conduct basic and applied research and development (R&D) to advance scientific knowledge, the nation’s energy resources, national security, environmental quality, and to strengthen educational foundations and national economic competitiveness. DOE programs are carried out in partnership with other DOE national laboratories, academia, government agencies, the international scientific community, and the private sector. The Contractor will seek to advance the frontiers of science and technology through broad interdisciplinary R&D programs that answer fundamental questions, solve technical problems (locally, regionally, nationally, and internationally), and support the development and application of technologies to address societal needs.

The Contractor has the responsibility for 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 to the benefit of the government. The Contractor shall conduct all work in a manner that optimizes productivity, and fully complies with all applicable laws, regulations, and terms and conditions of the Contract.

It is the Contractor’s responsibility to develop and implement innovative approaches and adopt practices that foster continuous improvement in accomplishing the mission of the Laboratory. DOE expects the Contractor to employ effective and efficient management structures, systems, and operations that maintain high levels of quality, safety and security in accomplishing the work required under this contract, and that, to the extent practicable and appropriate, rely on national, commercial, and industrial standards that can be verified and certified by independent, nationally recognized experts and other independent reviewers.
C-2 Statement of Work

2.1 General
The Contractor shall furnish the necessary personnel, facilities, equipment, materials, supplies, and services (except those provided by the Government) to accomplish the statement of work. The statement of work under this Contract is comprehensive in that the Contractor is expected to perform all necessary technical, operational, and management functions to manage and operate PNNL and perform the DOE missions assigned to PNNL.

The Contractor is expected to evaluate and update annually as necessary the PNNL mission statement as part of the Office of Science Laboratory Planning process. The Contractor shall define a long-range vision for PNNL. The long-range vision shall include how the Contractor will steward the core capabilities assigned to it by the Office of Science, define a science strategy for the future with major initiatives, provide a vision for current or future User Facilities, outline a plan for Strategic Partnership Projects and use of laboratory resources, provide a laboratory vision from an infrastructure standpoint (Campus Strategy), identifying gaps to enable a mission ready core capabilities, a clear plan to address those gaps, major investments in campus facilities and grounds, how the Contractor will attract and retain talent, maintain cost control and will status those activities as part of the Laboratory Planning process.

2.2 Department of Energy Research and Development Mission
PNNL’s research and development missions and programs support the overarching mission of the DOE through efforts in fundamental, energy and environmental sciences and technologies, and national security. PNNL shall provide highly skilled staff supporting scientific discovery and multi-disciplinary efforts to rapidly translate scientific discoveries into applications in physical, biological, computational, and environmental sciences, and operate scientific user facilities such as the Environmental Molecular Sciences Laboratory (EMSL). PNNL shall support the Department’s Science and Technology mission to sustain and nurture the nation’s science and technology enterprise, to support national goals in security, energy, environmental quality, human health and economic growth, and to provide a significant resource for scientists world-wide to engage with Laboratory staff in accelerating the nation’s progress towards these goals.

Over the term of this Contract, the Contractor shall conduct a broad spectrum of research and development programs in DOE’s science, national security, environmental quality, and energy missions as assigned by DOE. The Contractor shall make its government-funded scientific and technical research results broadly available to the public. The Contractor
shall also provide technical advice and guidance to DOE in support of policy development, program planning, and other DOE activities as requested by DOE, and shall bring forward recommendations for new research and development programs designed to achieve DOE mission goals.

In keeping with its overall role as a multi-program national laboratory, the specific research programs conducted and the overall mix of research at PNNL will change, as needed, over the Contract period with DOE’s changing mission needs, advances in science and technology, and other drivers. This statement of work does not represent a commitment to, or imply funding for, specific projects or programs.

2.2.1 Science and Energy Mission Role
The Contractor shall deliver the fundamental scientific knowledge and discoveries to advance the frontiers defined by the DOE Office of Science core capabilities. The Contractor shall translate those discoveries into contributions to the DOE’s Science & Energy Strategic Objectives of:

- Advancing the goals and objectives by supporting prudent development, deployment, and efficient use of “energy strategy” that also create new jobs and industries.
- Supporting a more economically competitive, environmentally responsible, secure and resilient U.S. energy infrastructure.
- Delivering the scientific discoveries and major scientific tools that transform our understanding of nature and strengthen the connection between advances in fundamental science and technology innovation.

2.2.2 National Security Mission Role
In the national security mission, the Contractor shall support DOE efforts to advance new measurement and analytical systems to transform nuclear and cyber security infrastructure, increase situational awareness and reduce the threat from weapons of mass effect. Contributions to mission include:

- Lowering the risk represented by weapons of mass destruction and other threats to our nation.
- Supporting other operational mission needs with research, policy support, and technology development and deployment, including but not limited to, defense energy and environmental programs,
cyber and data science, infrastructure resilience, chemical and biological forensics and airport security.

2.2.3 Environmental Management Mission Role
The Contractor shall provide science, technology, engineering and deployment support to DOE’s effort to aggressively clean up the environmental legacy of nuclear weapons and civilian nuclear research and development programs, permanently dispose of the Nation’s radioactive wastes. The Contractor shall provide science and technology contributions that substantially reduce the cost, time, and risk associated with DOE's cleanup, and enable site cleanup and closure decisions to have a sound, scientific basis.

2.3 FFRDC Research and Development Mission
The Secretary of Energy has authorized PNNL to operate as a Federally Funded Research and Development Center (FFRDC) established in accordance with Federal Acquisition Regulation Part 35 and operated under this management and operating (M&O) contract, as defined in FAR 17.6 and DEAR 917.6. DOE is committed to provide the appropriate use of PNNL assets for the benefit of other Federal agencies, private companies, universities, state and local institutions, and international entities within the limits set by DOE policy. The Contractor shall continue to use its multidisciplinary capabilities and apply its expertise to conduct research for the government and the private sector through Strategic Partnerships Program (SPP), Cooperative Research and Development Agreements (CRADAs) and Agreements to Commercialize Technology (ACT).

2.3.1 Strategic Partnerships Program (SPP)
The Contractor is expected to develop and maintain a strategic approach to managing the SPP portfolio to assist Federal agencies and non-Federal entities in accomplishing goals that may otherwise be unattainable and to avoid duplication of effort at Federal Facilities (access to highly specialized or unique facilities, services or technical expertise); increase research and development interactions to transfer technology originating at the laboratory to industry for further development or commercialization; and to maintain core capabilities and enhance the science and technology base at the laboratory. SPP work must be consistent with or complimentary to the missions of DOE and the Laboratory (to include the SC core capabilities).

2.3.2 Cooperative Research and Development Agreements (CRADAs)
The Contractor is expected to use CRADAs consistent with the terms of this Contract to facilitate the commercialization of technology, optimize resources, and protect the Government, the Contractor and the CRADA participant(s) involved.
2.3.3. Agreement to Commercialize Technology (ACT)

The Contractor may conduct privately-sponsored research at the Contractor’s risk for third parties. In performing ACT work, the Contractor may use staff and other resources associated with this Contract for the purposes of conducting research and furthering the DOE technology transfer mission in accordance with the terms of this Contract.

2.4 University, Research Institutions, Industry and International Collaboration Efforts

DOE expects the Contractor to establish partnerships with Universities, Research Institutions, Industry, and International institutions. The purpose of these efforts will be to build on the scientific knowledge of the institution, create through collaboration efforts and solutions to scientific issues and develop technologies that can be placed into the commercial sector to benefit the Nation.

2.4.1 Cooperation with Universities and Other Research Institutions

The Contractor shall also manage and operate programs for cooperation with academic and nonprofit research institutions to integrate research and education in scientific and technical fields underlying DOE’s programs, as well as facilitate strategic collaborations between PNNL and other research and educational institutions. Such cooperation with academic and nonprofit research institutions shall include but are not limited to:

- Joint appointments;
- Establishment and operation of joint graduate programs with domestic universities; and
- Joint programs and/or institutes with universities in priority areas of science

2.4.2 International Research Collaboration and Cooperation

In accordance with applicable policies, the Contractor shall maintain a broad program of international research collaboration in areas of research interest to the federal government. This collaboration will be both in areas where federal government has formal international cooperation agreements which assign the Contractor a specific role, as well as in areas of general interest to the federal governments’ research programs.

2.4.3 Technology Transfer with Industry

The Contractor shall cooperate with industrial organizations to assist in increasing U.S. industrial competitiveness, by assisting in the application of science and technology. Such cooperation may include, when appropriate, an early transfer of information to industry by arranging for
the active participation by industrial representatives in PNNL’s programs. Cooperation with industrial entities may include long-term strategic relationships aimed at commercialization of inventions or the improvement of industrial products. The Contractor may respond through appropriate mechanisms to specific near-term technological needs of industrial companies with special consideration given to working with small, small disadvantaged and women-owned businesses as well as regional and local companies through special assistance programs targeting such organizations. The Contractor is expected to develop productive relationships with regional and local companies. Cooperation may also include use by industrial organizations of Laboratory facilities and other assistance as may be authorized, in writing, by the Contracting Officer. The Contractor is also encouraged to engage in strategic collaborations with domestic industry that maintain PNNL capabilities and further small business development.

2.5 PNNL Regional and Community Involvement

The Contractor shall support local and regional economic development and apply existing Laboratory assets in the execution of such support. The Contractor shall also promote the institution within the local and regional communities.

The Contractor is expected to create opportunities to educate and train future generations of scientists, engineers, and innovators to support DOE’s workforce development and science, technology, engineering and mathematics (STEM) education efforts.

2.6 Operating Envelope

The Contractor shall achieve assigned objectives in a manner that is safe, secure, legally and ethically sound, as well as fiscally responsible. The operating envelope for PNNL is limited to work authorized by DOE by individual project approvals or through letters of direction, using approved work locations, and conducted in accordance with the approved PNNL Integrated Safety Management System and Safeguards, Security Management Plan and Appendix H.

2.6.1 PNNL Work Locations and Expectations

PNNL facilities may include Government-owned or leased facilities as well as approved Contractor leased facilities at such other locations as may be approved by DOE for use under this Contract. Subject to mutual agreement, other facilities may be used in the performance of the work under this Contract (e.g., Contractor-owned or Contractor-leased facilities) as approved by the Contracting Officer Section J, Appendix H).

Research and development work performed outside approved work locations (i.e. off-site) shall be reviewed and assessed for hazards, risks, application of appropriate mitigating controls and, as necessary, briefing of PNSO personnel prior to the initiation of work.
In accordance with the *Operational Agreement between the Office of Science Pacific Northwest Site Office and the Office of Environmental Management Richland Operations Office (Operational Agreement)*, incorporated as Section J, Appendix F of this Contract, the Contractor shall operate designated DOE Office of Environmental Management (EM) facilities located on the Hanford Site in the 300 Area. The Contractor will maintain the resources and expertise required to support these activities.

The Contractor shall perform overall integrated planning, acquisition, upgrades, and management of Government-owned, leased, or controlled facilities and real property accountable to PNNL. The Contractor shall employ an integrated management approach for management and utilization of PNNL facilities and infrastructure to support mission.

The Contractor shall employ facilities management practices that are integrated with mission assignments and business operations. The maintenance management program shall maintain facilities, equipment, and materials in a manner that:

- promotes and improves operational safety, environmental protection and compliance, property preservation, and cost effectiveness;
- ensures protection of life and property from potential hazards, continuity and reliability of operations, and fulfillment of program requirements; and
- ensures the condition of the assets will be maintained or improved to meet the DOE mission.

The Contractor shall initiate and continually improve facility and waste management practices that implement the “Start Clean – Stay Clean” principles whereby research projects and facility operations are planned and executed so to leave no residual waste, contamination or liability at the end of each project. Sufficient project funds must be maintained to ensure full restoration, remediation, and waste disposition can be achieved prior to project completion.

For all non-federal facilities, DOE Site Office Manager approval must be obtained prior to 1) the use of any unsealed radioactive material (as defined in the DOE-approved PNNL Radiation Protection Program) that may potentially contaminate the structure or systems (e.g., ventilation) of a facility outside an engineered confinement barrier, or 2) any planned activity that may introduce residual contamination (e.g. beryllium, crystalline perchlorates, hexavalent chromium, nanoparticles, biological agents) that may potentially contaminate the structure or systems (e.g., ventilation) of a facility outside an engineered confinement.
barrier. Radioactive sealed sources may be used in non-federal facilities or locations, as long as they meet the definitions and controls specified in the DOE-approved PNNL Radiation Protection Program.

For those facilities previously radiologically remediated or that have not been engaged in radiological work, the Contractor may not conduct radiological work without DOE Site Office Manager approval.

2.6.2 Hazards/Risks
The Contractor as part of its Integrated Safety Management System (ISM) will maintain a risk analysis system acceptable to DOE that addresses institutional/reputational, environment, safety, health or business risks and legacy considerations created by the acceptance of work under this Contract. All proposed work shall clearly identify risks and legacy considerations as part of the work authorization package along with justification for performing the work and controls that will be instituted to mitigate the risks and legacy considerations and where necessary the approvals required to initiate the work. Work will be conducted on the PNNL campus with protection of the public and environment in mind such that higher risk activities are conducted with the greatest buffer and separation practical.

The Contractor shall not conduct research with biological agents that exceed biosafety level II or involve Tier I select agents without prior DOE Site Office Manager approval. The Contractor will maintain individual facility chemical inventories below Threshold Planning Quantities. The Contractor will maintain radiological materials within authorized operating limits. The Contractor shall maintain business systems within compliance of applicable laws, regulations and directives.

DOE maintains its right to not authorize the proposed work based upon analysis of the hazards/risks and legacy considerations involved.

2.6.3 Security
The Contractor shall conduct work in a manner that protects sensitive unclassified information, classified information, special nuclear material, cyber systems and Government property, from sabotage, espionage, loss or theft. The Contractor shall obtain approval of safeguards and security plans from the cognizant security authority (i.e., Site Office Manager) which describes protective measures appropriate to the work being performed. Any significant changes or deviations from the approved safeguards and security plans require the cognizant security authority’s review and approval.
C-3  Performance Expectations, Objectives, and Measures

3.1  Core Expectations

3.1.1  General
The relationship between DOE and its national laboratory management and operating contractors is designed to bring best practices for research and development to bear on the DOE’s missions. Through application of these best practices, DOE seeks to assure programmatic and operational performance of today’s research programs and the long-term quality, relevance, and productivity of the laboratories against tomorrow’s needs. Accordingly, DOE has substantial expectations of the Contractor in the areas of: program delivery and mission accomplishment; laboratory stewardship; and laboratory operations and financial management.

3.1.2  Program Delivery and Mission Accomplishment Expectations
The Contractor is expected to provide effective planning, management, and execution of assigned research and development programs. The Contractor is expected to execute assigned programs so as to strive for the greatest possible impact on achieving DOE’s mission objectives, to aggressively manage PNNL’s science and technology capabilities and intellectual property to meet these objectives, and to bring forward innovative concepts and research proposals that are well-aligned with DOE missions. The Contractor shall propose work that is aligned with, and likely to advance, DOE’s mission objectives, and that is well matched to Laboratory capabilities. The Contractor shall strive to meet the highest standards of scientific quality and productivity, “on-time, on budget, as-promised” delivery of program deliverables, and first-rate service to the research community through user facility operation.

3.1.3  Operating Principles
The Contractor is accountable for providing reasonable assurance to the DOE that PNNL’s system of management controls when properly implemented provides an effective and efficient means of meeting all applicable requirements while accomplishing assigned missions.

To provide reasonable assurance, the Contractor must identify, monitor, and address existing and/or emerging risks important to the accomplishment of PNNL’s mission and Contract requirements.
Laboratory management is to provide and report in a timely manner performance data to Governance processes, which ultimately provide assurance to DOE.

The Contractor will be responsible for penalties and fines arising from work conducted by Contractor staff which is not consistent with work authorization clause(s) of the Contract which outline the scope of work the Contractor may appropriately perform under this Contract. DOE shall not be liable for special, consequential, or incidental damages attributed to such actions.

3.1.4 Laboratory Stewardship Expectations
The Contractor is expected to be an active partner with DOE in assuring that PNNL is renewed and enhanced to meet future mission needs. Within the constraints of available resources and other Contract requirements, the Contractor, in partnership with DOE, shall:

(a) Maintain a Laboratory vision and long-term strategic plan to meet anticipated DOE and national needs.

(b) Attract, develop, and retain an outstanding work force, with the skills and capabilities to meet DOE’s evolving mission needs.

(c) Renew and enhance research facilities and equipment so that PNNL remains mission ready and is well-positioned to meet future DOE needs.

(d) Build and maintain a financially viable portfolio of research programs that generates the resources required to renew and enhance Laboratory research capabilities over time.

(e) Maintain a positive relationship with the broader research community, to enhance the intellectual vitality and research relevance of PNNL, and to bring the best possible capabilities to bear on DOE mission needs through collaborative relationships with the research community.

(f) Build a positive, supportive relationship founded on openness and trust with the community and region in which PNNL is located.

3.1.5 Operational and Financial Management Expectations
The Contractor is expected to effectively and efficiently manage and operate PNNL through management practices designed to
enable research. The Contractor shall assure the protection and proper maintenance of DOE research and information assets, the health and safety of staff, the public, and the environment. The Contractor is also to develop and deploy management systems and practices that are compliant, efficient and enhance research productivity and mission accomplishment.

3.1.6 Expectations for Program and Project Management for the Acquisition of Capital Assets

DOE’s Project Management Principles apply to all capital asset projects using a tailored approach as defined or approved by the sponsoring project office. This includes General Plant Projects (GPPs) and Institutional General Plant Projects (IGPPs) as defined in DOE Order 430.1B. The Contractor is expected to provide for:

a. Line management accountability
b. Sound, disciplined, up-front project planning.
c. Well-defined and documented project requirements.
d. Development and implementation of sound acquisition strategies that incorporate effective risk handling mechanisms.
e. Well-defined and managed project scope and risk-based Performance Baselines (PBs) and stable funding profiles that support original cost baseline execution.
f. Development of reliable and accurate cost estimates using appropriate cost methodologies and databases.
g. Properly resourced and appropriately skilled project staffs.
h. Effective implementation of all management systems supporting the project (e.g., quality assurance, integrated safety management, risk management, change control, performance management, and contract management).
i. Early integration of safety into the design process.
j. Effective communication among all project stakeholders.
k. Utilization of peer reviews throughout the life of a project to appropriately assess and make course corrections.
l. Process to achieve operational readiness is defined early in the project for Hazard Category 1, 2, and 3 nuclear facilities.

For all capital asset projects with a Total Project Cost (TPC) equal to or greater than $50 million, the Contractor shall comply with the
requirements as set forth in DOE Order 413.3B Contractor Requirements Document (CRD). [M1140]

3.1.7 **Sustainable Practices for the Institution**

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

3.2 **Performance Objectives and Measures**

The performance objectives and measures of this contract are stated in the annual Performance Evaluation and Measurement Plan for the Management and Operations of the Pacific Northwest National Laboratory.
Part I – The Schedule

Section D – Packaging and Marking

Reserved
Part I – The Schedule

Section E

Inspection and Acceptance

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E – 1 FAR 52.246-9 Inspection of Research and Development (Short Form) (Apr 1984)
The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

[M1067]

(End of Clause)
Part I – The Schedule

Section F

Deliveries or Performance

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F – 5  Principal Place of Performance ..................................................................................... 20
F – 1  Period of Performance

(a) This Contract shall be effective as specified in Block No. 3 – Effective Date, of the Standard Form 30, for this modification, except as otherwise provided, and shall continue up to and including September 30, 2017, unless sooner terminated according to its terms and conditions, or extended in accordance with the appropriate FAR and DEAR provisions.

(b) This contract shall be extended for a period of five (5) years effective October 1, 2017 and shall continue up to and including September 30, 2022 unless sooner terminated according to its terms and conditions, or extended in accordance with the appropriate FAR and DEAR provisions.

[M1067]


(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the Parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the Parties shall have agreed, the Contracting Officer shall either:

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this Contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if:

(1) The stop-work order results in an increase in the time required for, or in the Contractor’s cost properly allocable to, the performance of any part of this Contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this Contract.

(3) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
(4) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

[M1067]

F – 3 Deliverables

The Contractor will provide to the Contracting Officer the routine deliverables identified in the following table. These deliverables are in addition to those required elsewhere in this Contract.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Source Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>CO Letter 02-FMD-0060, dated October 23, 2002, subject &quot;Reconciliation of Activities Charged to Suspense Debits and Budget and Reporting YN01&quot;.</td>
<td>Provide by the 10th of every month a reconciliation of activities charged to suspense accounts.</td>
</tr>
<tr>
<td>B</td>
<td>DOE HQ</td>
<td>As required by DOE HQ, provide input into the DOE Workforce Information System (WFIS): 1) Annual workforce restructuring report, and 2) quarterly EEO reports.</td>
</tr>
<tr>
<td>C</td>
<td>CO letter 06-PD-187 dated May 10, 2006, subject &quot;Field Office Integrated Contactor Trial Balance Reconciliation Certification&quot;.</td>
<td>By the 15th calendar day of each month, provide a trial balance monthly recertification. Additionally, provide a biannual reconciliation and certification at the full Accounting Flex Field level for specific Standard General Ledger accounts.</td>
</tr>
<tr>
<td>D</td>
<td>CO letter 08-PNSO-0601 dated Sept. 29, 2008, subject “Letter of Credit”.</td>
<td>Quarterly review of payments cleared financing arrangement with the financial institution, to be provided within 30 days of end of each quarter, plus semi-annual analysis that demonstrates the adequacy of funds on deposit for the previous six-month period consistent with DOE Accounting Handbook, section 6-11.</td>
</tr>
<tr>
<td>E</td>
<td>CO letter 09-PNSO-0158 dated Jan. 16, 2009, subject “Washington State University Use of DOE Owned Equipment.</td>
<td>Consistent with DOE Order 522.1 required analysis of pricing data, provide annual report detailing DOE equipment in BSEL, WSU usage of equipment in the service center and equipment that meets the criteria for a service center, and an analysis showing WSU non-collaborative usage no later than 30 days after the end of each fiscal year.</td>
</tr>
<tr>
<td>Deliverable</td>
<td>Source Requirement</td>
<td>Description</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>F</td>
<td>CO letter 14-PNSO-0132 dated March 5, 2014, subject “Approval of FY 2014 Proprietary Use Rates for the Environmental Molecular Sciences Laboratory (EMSL) User Facility”</td>
<td>By September 1 of every year, provide to the Contracting Officer for approval the next fiscal year proprietary use rates for the EMSL User Facility. [M991]</td>
</tr>
<tr>
<td>G</td>
<td>CO Letter 13-PNSO-0248, dated July 8, 2013, subject &quot;Capitalizing Software Development Costs&quot;</td>
<td>As required by DOE HQ's Guidance related to Capitalizing Software Development Costs dated May 21, 2013 &amp; October 1, 2000 related to SFFAS 10 requirements, provide a yearly report of all capitalized software development costs by August 20th of every year and record all capitalized software in STARS in the third and fourth quarter of every fiscal year. [M991]</td>
</tr>
<tr>
<td>H</td>
<td>PNSO Letter 18-PNSO-0136, March 20, 2018, subject “Review and Approval Process for Non-Department of Energy (DOE) Funded Work Involving Animal Use at Office of Science (SC) Laboratories, Transmittals of Surveillance S-19-PSNO-PNNL-003, and Notification of Proposed Changes to Section F – Deliveries or Performance. Add email reference (Melanie P. Fletcher).&quot;</td>
<td>Per updated guidance by DOE-SC, maintain a list of all animal use projects (mammals and non-mammals, excluding sponges funded by DOE, including NNSA, and non-DOE sponsors, and provide a mid-year and year-end report to DOE-SC, using the DOE-SC provided format. The report shall be submitted electronically to PNSO, using the current template, for transmittal to SC-HQ every year. [M1246]</td>
</tr>
<tr>
<td>I</td>
<td>PNSO Letter 18-PNSO-0302, August 13, 2018, subject “Improper Payment and Payment Recapture Audit Reporting Requirements”</td>
<td>Per updated guidance, OMB Circular A-123, Appendix C, Requirements for Payment Integrity Improvement as part of annual payment auditing reporting are required. Risk assessments/reporting templates and Certifications will be due annually to PNSO with a copy to the Oak Ridge Office, every August or as identified in the annual guidance. [M1182]</td>
</tr>
</tbody>
</table>
F – 4 Stop Work and Shutdown Authority

FAR 52.242-15 – Stop Work Order (Alternate I), allows only the Contracting Officer to stop work or shutdown facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

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

[M1067]

F – 5 Principal Place of Performance

The principal place of contract performance is at the site of the Pacific Northwest National Laboratory located in Richland, Washington (Benton County).

[M1067]
Part I – The Schedule

Section G

Contract Administration Data

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G-3 Correspondence Procedure ............................................................................. 4
G-4 Modification Authority .................................................................................. 5
G-1 **Head of Contracting Activity (HCA), Contracting Officer (CO), and Contracting Officer’s Representative (COR)**

(a) The Chief Operating Officer, DOE Office of Science, has been designated as the HCA for this Contract.

(b) Contract correspondence for the Pacific Northwest Site Office Contracting Officer is as follows:

Melanie P. Fletcher  
Contracting Officer  
Pacific Northwest Site Office (PNSO)  
U.S. Department of Energy  
P.O. Box 350, K9-42  
Richland, WA 99352  
[M1246]

In the event that the above-named individual is absent for an extended period or an urgent action is required, any other duly appointed Contracting Officer assigned to PNSO or assigned to the M&O Policy Division of the Integrated Support Center, shall be authorized to take the required contractual action(s) within the limits of his/her authority.  
[M1067]

(c) The CO/COR(s) for this Contract have been designated in writing in accordance with paragraph (b) of the Clause G-2, Technical Direction and are listed below:

<table>
<thead>
<tr>
<th>Name &amp; Position</th>
<th>Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ryan M. Kilbury, Contract Specialist, Pacific Northwest Site Office</td>
<td>Authorized Contracting Officer for consent to subcontract in amounts not to exceed $25M and direct changes to the contract in an amount not to exceed $25M.</td>
</tr>
<tr>
<td>Melanie P. Fletcher, Contract Specialist, Pacific Northwest Site Office</td>
<td>Authorized Contracting Officer for consent to subcontract in amounts not to exceed $25M and direct changes to the contract in an amount not to exceed $25M.</td>
</tr>
<tr>
<td>Genice Madera, Contract Specialist, Pacific Northwest Site Office</td>
<td>Authorized Contracting Officer for consent to subcontract in amounts not to exceed $1M,</td>
</tr>
<tr>
<td>Name &amp; Position</td>
<td>Authorities</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Roger E. Snyder, Manager, Pacific Northwest Site Office</td>
<td>Unlimited authority to act for the Contracting Officer for functions that do not involve a change in the scope, price, terms or conditions of the Contract.</td>
</tr>
<tr>
<td>Julie K. Erickson, Deputy Manager, Pacific Northwest Site Office</td>
<td>Unlimited authority to act for the Contracting Officer for functions that do not involve a change in the scope, price, terms or conditions of the Contract.</td>
</tr>
<tr>
<td>Debbie E. Trader, Director, Laboratory Stewardship Division, Pacific Northwest Site Office</td>
<td>Unlimited authority to act for the Contracting Officer for functions within the scope of the PNSO Laboratory Stewardship Division that do not involve a change in the scope, price, terms, or conditions of the Contract.</td>
</tr>
<tr>
<td>Theodore P. Pietrok, Director, Operations Division, Pacific Northwest Site Office</td>
<td>Unlimited authority to act for the Contracting Officer for functions within the scope of the PNSO Operations Division that do not involve a change in the scope, price, terms, or conditions of the Contract.</td>
</tr>
<tr>
<td>Jeffery W. Day, Program Manager, Laboratory Stewardship Division, Pacific Northwest Site Office</td>
<td>Authorized to take all actions associated with the position as Program Manager for the acquisition of the High Performance Computing System-4 (HSPC-4), which will be procured and placed into the Environmental Molecular Sciences Laboratory (EMSL).</td>
</tr>
<tr>
<td>Dationa O. Mitchell, Attorney-Advisor, Office of Chief Counsel, Oak Ridge Operations Office</td>
<td>Unlimited authority to act for the Contracting Officer for Litigation Management and Legal Policy functions that do not involve a change in the scope, price, terms or conditions of the Contract.</td>
</tr>
<tr>
<td>Wendy E. Bryant, Assistant Chief Counsel for Contracts and General Law, Office of Chief Counsel, Oak Ridge Operations Office</td>
<td>Unlimited authority to act for the Contracting Officer for Litigation Management and Legal Policy functions that do not involve a change in the scope, price, terms or conditions of the Contract.</td>
</tr>
</tbody>
</table>

[M1246]
(End of Clause)

G–2 DEAR 952.242-70 Technical Direction (DEC 2000)

(a) Performance of this work under this Contract shall be subject to the technical direction of the 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 the 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 directions 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.”

(End of Clause)

G–3 Correspondence Procedure

Acting as a representative of the DOE Office of Science, the Pacific Northwest Site Office (PNSO) has the overall lead responsibility for oversight and administration of the programs and activities conducted by the Laboratory. To promote timely and effective administration, correspondence, submitted under the Contract, shall contain a subject line commencing with the Contract number and shall be subject to the following procedures:

(a) Technical Correspondence

Technical correspondence shall be addressed to the DOE Program Manager, COR, or other duly authorized Government representative, with an information copy of the correspondence to the PNSO. For the purpose of this paragraph, technical correspondence does not include technical correspondence where patent issues are involved; correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this Contract; and correspondence associated with approval requirements of the Contracting Officer.
(b) Other Correspondence

Other than technical correspondence shall be addressed to the Contracting Officer with information copies of the correspondence to the PNSO and as appropriate to the DOE Program Manager, COR, or other authorized Government representatives.

(End of Clause)

G–4 Modification Authority

Notwithstanding any of the other provisions of this Contract, a Contracting Officer shall be the only individual on behalf of the Government authorized to:

1) Assign additional work within the general scope of the Statement of Work of the contract;
2) Issue a change as defined in the “Changes” clause of the Contract;
3) Change any of the expressed terms, conditions or specifications of the Contract;
4) Accept non-conforming work; or
5) Waive any requirement of this Contract;

[MI067]

(End of Clause)
Part I – The Schedule

Section H

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DOE agrees to furnish and make available to the Contractor, for the performance of work under this Contract, the Laboratory land/facilities designated as follows:

(a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Pacific Northwest National Laboratory Site at Richland, Benton County, Washington and Sequim, Clallam County, Washington; and

(b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this Contract.

DOE reserves the right to make part of the above-mentioned land or facilities in paragraphs (a) and (b) available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Unless otherwise authorized by this Contract or as agreed to by the Parties, the Contractor agrees to provide to DOE the exclusive use of the Contractor-owned facilities and the beneficial use of the Contractor-owned land for the operations of the Pacific Northwest National Laboratory, in accordance with the rights and obligations set forth in Section J, Appendix I, Advance Agreement on Costs and Associated Use of Battelle Owned Facilities and Real Property.

A list of current approved Government-owned and leased and Contractor-owned and Contractor-leased Laboratory land/facilities is contained in Section J, Appendix H – List of Approved Laboratory Land/Facilities (Owned and Leased).

Subject to mutual agreement land/facilities may be authorized or removed in the performance of the work under this Contract.

The Contractor may use the above-mentioned Government-owned or leased land, facilities and property in its custody under this Contract to conduct research and development activities under the Contract Clause entitled "Non-Federal Agreements for Commercializing Technology (Pilot)".

(End of Clause)

[M1067]
H-2  Source and Special Nuclear Materials

The Contractor shall comply with all applicable regulations and instructions of DOE relative to the control of and accounting for source and special nuclear material (as these terms are defined in applicable regulations). The Contractor shall make such reports and permit such inspections as DOE may require with reference to source and special 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. The Contractor shall also submit to DOE, as requested for all specified nuclear materials, the annual Nuclear Materials Inventory Assessment and the Nuclear Materials Forecast.

(End of Clause)

H-3  Workers’ Compensation

(a)  Pursuant to State of Washington Revised Code (RCW) Title 51, the Department of Energy (DOE), Richland Operations Office (RL) is a group self-insurer for purposes of workers’ compensation coverage. The coverage afforded by those workers’ compensation statutes shall, for work under this Contract in the state of Washington, be subject to the following:

(1)  Under the terms of a Memorandum of Understanding (MOU) with the Washington Department of Labor and Industries (L&I), DOE has agreed to perform all functions required by self-insurers in the State of Washington. While this MOU is in effect, the Contractor is not required to pay for workers compensation coverage or benefits except as otherwise provided below or as directed by the Contracting Officer.

(2)  The Contractor shall submit to DOE (or other party as designated by DOE for transmittal to the L & I), such payroll records required by the workers compensation laws of the State of Washington.

(3)  The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the Department, the accident reports provided for by RCW Title 51, Section 51.28.010, or any other documentation requested by DOE or the L&I pursuant to the workers compensation laws of the State of Washington.

(4)  The Contractor shall take such action, and only such action, as DOE requests in connection with any accident reports, including assistance in the investigation and disposition of any claim thereunder and, subject to the direction and control of DOE, the conduct of litigation in the Contractor’s own name in connection therewith.
(5) Under RCW Title 51.32.073, DOE is the self-insurer and is responsible for making quarterly payments to the State Department of L&I. In support of this arrangement, the Contractor is responsible for withholding appropriate employee contributions and forwarding on a timely basis these contributions plus the employer-matching amount to DOE.

(6) The workers’ compensation program shall operate in partnership with Contractor employee benefits, risk management, and environmental, safety, and health management programs. The Contractor shall cooperate with DOE for the management and administration of DOE, Richland Operations Office (RL) self-insurance program that provides workers’ compensation benefit coverage to Contractor employees at PNNL.

(7) The Contractor must certify to the accuracy of the payroll record used by the Department in establishing the self-insurance claims reserves, and cooperate with any state audit.

(8) The Contractor shall submit to the Contracting Officer, a yearly evaluation and analysis of workers’ compensation cost as a percent of payroll compared with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the Department (once DOE has provided the Contractor with the necessary data to perform the analysis required in this paragraph).

(b) The Contractor will provide statutory worker’s compensation coverage for staff members performing work under this Contract outside of the State of Washington and not otherwise covered by the State of Washington worker’s compensation laws.

(c) Subcontractors performing work under this Contract on behalf of the Contractor are not covered by the provision of the Agreement referenced in (a)(1) of this clause. The Contractor shall flow-down to its subcontractors the requirement to provide statutory worker’s compensation coverage for the subcontractor’s employees. The Contractor shall have no responsibility for subcontractor worker’s compensation when it includes this requirement in the subcontract.

(End of Clause)

H-4 Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties

(a) The Contractor shall accept, in its own name, service of notices of violation or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor’s performance of work under this Contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this Contract.
(b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

(End of Clause)

H-5 Allocation of Responsibilities for Contractor Environmental Compliance Activities

(a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this Contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.

(b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the “Parties”, for implementing the environmental requirements at facilities within the scope of the Contract. In this Clause, the term “environmental requirements” means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, including the Hanford Federal Facility Agreement and Consent Order, consent orders, permits, and licenses.

(c) (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this Contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this Contract.

(ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with
the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the Contract.

(d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this Contract, and the Contractor has been directed in by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(End of Clause)

H-6 Other Intellectual Property Related Matters

(a) Transfer of Patent Rights to a Successor Contractor

As consideration for the Contractor’s commitment to expend private monies in its privately-funded technology transfer effort under this Contract at a level at least commensurate with such expenditures under its prior contracts, including an average of five hundred thousand dollars ($500,000) per year for activities under the privately-funded technology transfer program which includes a combination of the filing of an average of 7 patent applications, and no fewer than 5, per year during the period of this Contract, including expenses related to the patenting, marketing, licensing and development of Subject Inventions, the Parties agree that at the termination or expiration of this Contract, the following terms and conditions shall apply to Subject Inventions which were elected to be pursued under the Contractor’s privately-funded technology transfer program, and to the licenses and royalties generated therefrom: [M881]

(1) In the event Contractor has executed a license, assignment or other commercialization agreement to a Subject Invention prior to termination or expiration of this Contract in which royalties, fees, equity or other consideration is to be or has been paid (hereinafter “agreement”), the distribution of net income from royalties, equity, or any other consideration received or to be received under such agreement shall remain as prior to Contract termination or expiration and shall continue for the duration of such agreement. As set forth in paragraph (d) below, fifty-one percent (51%) of such net income shall go to the Successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a Successor Contractor, to such other entity designated by the Government, and forty-nine percent (49%) may be retained by the
Contractor for use in accordance with 35 USC Section 200 et seq. Administration of agreements related to such Subject Invention, shall remain with the Contractor. Title to such Subject Invention shall remain with the Contractor provided the Contractor has fulfilled the commitments set forth in paragraph (a) above. If the Contractor has not fulfilled the commitments set forth in paragraph (a) above, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or such other entity designated by the Government.

(2) In the event Contractor has not executed an agreement (as defined in paragraph (1) above) to a Subject Invention, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or to such other entity designated by the Government, unless Contractor can demonstrate that it has expended at least twenty thousand dollars ($20,000) of private monies in its privately funded technology transfer program toward the patenting, licensing, marketing and/or development of such Subject Invention, and the Contractor has fulfilled the commitments set forth in paragraph (a) above. In the event Contractor retains title to a Subject Invention under this paragraph, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.

(3) In the event Contractor retains title to Subject Inventions under paragraphs (1) or (2) above, and executes an agreement (as defined in paragraph (1) above) to such Subject Inventions after the termination or expiration of this Contract, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.

(4) The Contractor and the Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to Subject Inventions. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, DOE’s need for continued operation of the Facility, potential commercial use, assumption of patent related liabilities, effective technology transfer, and the need to market the technology. Such negotiations shall not change the disposition of title provided for in paragraphs (1) and (2) above unless mutually agreed by the Contractor and the Government.

(5) For any Subject Invention to which the Contractor maintains title or administration of an agreement under paragraphs (a)(1)-(2) above, the Contractor agrees that, to the extent it is able to do so in view of prior licenses or assignments, it will negotiate in good faith to enable the Successor Contractor to practice such subject invention in the form of CRADAs, Strategic Partnerships Projects agreements, licenses or other
appropriate agreements, in order to fulfill the missions and programs of the Facility. It is the intention of the Contractor to enable the Successor Contractor to continue operation of the Facility, including the Facility’s technology transfer program. In any event, the Successor Contractor retains the nonexclusive royalty-free right to practice the Subject Invention on behalf of the U.S. Government.

(b) Costs

(1) Except as otherwise specified in the clause of this Contract entitled, “Technology Transfer Mission,” as allowable costs for conducting activities pursuant to provisions of that clause, no costs are allowable as direct or indirect costs for the preparation, filing, or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs after the Contractor elects to pursue commercialization of a Subject Invention under its privately-funded technology transfer program pursuant to paragraph (f) below. Should the Contractor make such election after allowable costs have been incurred with respect to the patenting of a particular Subject Invention, such costs shall be repaid from private funds concurrent with such election. [M1067]

(c) Liability of the Government

(1) It is understood that the privately-funded technology transfer activities of the Contractor under this clause are not subject to the clause entitled, “Insurance–Litigation and Claims.”

(2) The Contractor shall not include in any license agreement or assignment any guarantee or requirement, which would obligate the Government to pay any costs or create any liability on behalf of the Government.

(3) The Contractor shall include in all licensing agreements and in any assignment of title the following clauses unless otherwise approved or directed by the Contracting Officer following consultation with the DOE Patent Counsel:

(i) “This agreement is entered into by Battelle Memorial Institute (BMI) in its private capacity. It is understood and agreed that the U.S. Government is not a party to this agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this agreement or the subject matter licensed assigned.”

(ii) “Nothing in this Agreement shall be deemed to be a representation or warranty by the U.S. Government of the validity of any of the patents or the accuracy, safety, or usefulness for any purpose, of
any TECHNICAL INFORMATION, techniques, or practices at any time made available by BMI. The U.S. Government shall have no liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from:

(A) The production, use, or sale of any apparatus or product, or the practice of the INVENTIONS;

(B) The use of any TECHNICAL INFORMATION, techniques, or practices disclosed by BMI; or

(C) Any advertising or other promotional activities with respect to any of the foregoing, and LICENSEE shall hold the U.S. Government harmless in the event the U.S. Government is held liable. BMI represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert.”

(d) Distribution of net income

In the event the Contractor engages in a privately funded technology transfer program under the clause of this Contract entitled, “Patent Rights – Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor” or the clause of this Contract entitled, “Rights in Data – Technology Transfer,” such that private funds are utilized for technology transfer after the Contractor elects to pursue privately-funded commercialization of a Subject Invention or after the Contractor has received permission from the Contracting Officer to assert statutory copyright in a software program and received DOE approval to commercialize such software under its privately funded technology transfer program under paragraph (h) below, net income from such privately funded technology transfer program shall be distributed as follows:

(1) Fifty-one percent (51%) of net income shall be used at the Facility for scientific research, development and education consistent with the research and development mission and objectives of the Facility. Forty-nine percent (49%) of such net income may be used by the Contractor at a location other than the Facility if such use is for scientific research, development, and education consistent with the research and development mission and objectives of the Facility in accordance with 35 USC Section 200 et seq.
(2) “Net income” is defined as that amount remaining after the expense of patenting costs, licensing and marketing costs, payments to inventors, and other expenses incidental to the administration of Subject Inventions is deducted from gross income received.

(e) Equity Plan

It is the intent of the Government and the Contractor that the Contractor shall, in its discretion, take reasonable and prudent actions from both a commercial and stewardship of the Facility’s technology transfer perspective related to the ownership of equity received from third parties under this Contract. The Contractor shall submit to the Contracting Officer a plan, which shall set forth principles for the Contractor’s acquisition, retention and disposition of equity received from third parties as consideration for licenses or assignments granted to such third party. Such plan shall consider, at a minimum,

(1) the manner in which the Contractor shall acquire such equity in a third party, including the manner in which the Contractor shall apportion capital contributions to such third party between the relative value of private Contractor contributions and the value of contributions representing a license under a Subject Invention;

(2) the manner in which the Contractor shall hold such equity, given that the Government has an undivided 51% interest in that portion of such equity representing the value of contributions resulting from a license to such Subject Invention;

(3) the manner in which the Contractor shall dispose of such equity, giving due consideration to the potential for a conflict of interest between the interests of the Government and the Contractor; and

(4) the manner in which the Contractor’s inventors are compensated.

(f) The Contractor shall indicate whether a Subject Invention will be pursued under its government-funded technology transfer program or its privately-funded technology transfer program within six (6) months after the Subject Invention is reported to the Contractor, unless otherwise agreed in writing by the DOE Patent Counsel.

(g) In its privately-funded technology transfer program, the Contractor shall be substantially guided by the principles of U.S. Competitiveness and Fairness of Opportunity as set forth herein.

(h) When requesting approval from DOE to assert statutory copyright in a particular software package pursuant to the clause entitled “Rights in Data—Technology Transfer”, Contractor may request that commercialization of such software
proceed under the provisions of this Clause. If approved, no costs of such commercialization thereafter shall be allowable, and the proceeds of such commercialization shall be treated in accordance with paragraph (a) above as if such proceeds had resulted from the commercialization of a Subject Invention.

(M1067)

(End of Clause)

H-7 Continued Improvement Initiative

It is the intent of the Parties to continue to work together during the term of this Contract to develop and implement innovative approaches and techniques for improving Contractor performance and Contract administration. This initiative for continued improvement will focus on improving Contractor efficiency and effectiveness, enhancing Contractor accountability, gaining savings in Laboratory programs, improving cost-effective management of risks, and increasing efficiencies in Federal oversight of the Contract. Areas that the Parties will evaluate, include, but are not limited to, the following:

(a) Management/reduction of mandatory Hanford Site Services and ensure cost allocation equity;

(b) Policies and procedures related to the Technology Transfer mission of the Laboratory; and

(c) Incentive Compensation and/or other enhancements to variable pay programs.

(End of Clause)

[M881]

H-8 Standards of Contractor Performance Evaluation

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

(1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of standardized performance goals and objectives as the measurement basis against which the Contractor’s overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will focus on results to drive improved performance and increased effective and efficient management of the Laboratory.
(2) The Parties agree to utilize the process described within Section J, Appendix E “Performance Evaluation and Measurement Plan” (PEMP) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix E will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

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

(4) The Contractor shall provide formal status briefings for performance against Appendix E, as agreed to by the Laboratory Director and the Manager, PNSO. [M813]

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

(6) The Contracting Officer shall annually provide a written assessment of the Laboratory’s performance to the Contractor, which shall be based upon the process described in Appendix E. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor’s final performance evaluation and rating for each goal. The Contractor’s self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor’s performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix E that is deemed to have an impact (either positive or negative) on the Contractor’s performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., OIG, GAO, DCAA,
etc.) conducted throughout the year, annual reviews (if needed), and DOE “for cause” reviews. With exception of “for cause” reviews, the DOE Pacific Northwest Site Office will conduct no more than one management and operations review per year. The on-site portion of such reviews will normally last no more than two weeks.

(b) Standards of performance measure review

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

(2) Failure to include an objective or performance measure/target in the Contract Appendix E does not eliminate the Contractor’s obligation to comply with all applicable terms and conditions as set forth elsewhere within the Contract.

(3) In the event the Contracting Officer or HCA decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance. [M432]

(End of Clause)

H-9 Care of Laboratory Animals

(a) Before undertaking performance of any contract involving the use of Laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a), above, of this provision.
In the care of any animals used or intended for use in the performance of this Contract, the Contractor shall comply with USDA regulations governing animal care and usage, as well as all other relevant local, State, and Federal regulations concerning animal care and usage. In addition the Contractor will ensure that research will be conducted in a facility that either: (i) has a current National Institutes of Health (NIH) assurance number for animal care and usage, or (ii) is currently accredited for animal care and usage by an appropriate organization such as the Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC) International, or (iii) has a DOE Assurance Plan Number.

(End of Clause)

H-10 Protection of Human Subjects

Before undertaking the performance of any research involving the use of human subjects, the provisions of 10 CFR 745, 45 CFR Part 46, and the applicable DOE requirements regarding Protection of Human Subjects as incorporated into this Contract in Section J, Appendix D, must be complied with. This requirement applies to research undertaken with DOE support, strategic partnership projects, and collaborations with other institutions. Intelligence-related projects with potential human subjects research (HSR) and/or Human Terrain Mapping (HTM) tasks, will be reviewed by the Central DOE Institutional Review Board - Classified (IRB-C), regardless of the classification level. The DOE Institutional Official's approval is required following IRB-C approval, and prior to initiation, of any HSR and/or HTM projects that are classified in whole or in part, regardless of whether they can be reviewed by the IRB-C in an unclassified manner.

(End of Clause)

[M1110]

H-11 Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-Made.

(End of Notice)

H-12 Privacy Act Records

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE regulations (10 CFR 1008), the Contractor shall maintain the following “Systems of Records” on individuals in order to accomplish the United States
Department of Energy functions:

(a) Intelligence Related Access Authorization (DOE-15)
(b) Personnel Radiation Exposure Records (DOE-35)
(c) Security Education and/or Infraction Reports (DOE-48)
(d) Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites (DOE-52)
(e) Counterintelligence Administrative and Analytical Records and Reports (DOE-81)
(f) Counterintelligence Investigative Records (DOE-84)

The parenthetical DOE number designations for each system of records refer to the official “System of Records” number published by the DOE in the Federal Register pursuant to the Privacy Act.

(End of Clause)

H-13 Administration of Subcontracts

(a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.

(b) The 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” to be removed (de-scoped) from the Contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. [M1100]

(d) To the extent that DOE removes (de-scopes) work from this Contract, any such removed or withdrawn work shall be treated as a change in accordance with the clause of this Contract, titled Changes (Dec 2000). A “material change” for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory’s Estimated Fee Base. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor’s annual available performance fee. The negotiation
of fee will be in accordance with the Contract clause entitled “Determining Total Available Performance Fee and Fee Earned”. The Parties will also negotiate appropriate adjustments to the Contractor’s Subcontracting Plan or any other applicable Contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor’s subcontracting base and goals. [M1017]

(End of Clause)

H-14 Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000.

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

(End of Clause) [M1067]

H-15 Service Contract Labor Standards

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

(End of Clause) [M1067]

H-16 Cap on Liability

(a) The Parties have agreed that the Contractor’s liability, for certain obligations it has assumed under this Contract, shall be limited as set forth in paragraph (b)
below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following:

1. The cost principle at DEAR 931.205-47 titled “Costs Related to Legal and Other Proceedings” [DOE coverage—paragraph (h), Costs Associated with Whistleblower Actions];

2. The clause titled “Property, ” paragraph (f)(1)(i)(C);

3. The clause titled “Insurance – Litigation and Claims”, (h), with respect to prudent business judgment only; and

4. The clause titled “Insurance – Litigation and Claims, ” (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor’s managerial personnel as defined in the clause titled “Property. ” [M881]

(b) The Contractor shall be liable for an amount not-to-exceed 1.25 times the maximum total available performance fee for each fiscal year. The amount of the Contractor’s liability shall be calculated on a cumulative, per fiscal year basis. The annual cap which will apply shall be based on the fiscal year in which the Contractor’s act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor’s act or failure to act overlaps more than one fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor’s act or failure to act occurred. If the Contractor’s cumulative obligations equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to (a)(1) though (4) above.

(End of Clause)

H-17 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) pursuant to the clause entitled “Standards of Contractor Performance Evaluation.” This PEMP shall establish the expected strategic results in the areas of science and technology, stewardship, and management/operations excellence. The measurement basis for the science and technology performance goals shall be established by each major customer of the Laboratory, and customer evaluation will be the primary means of evaluating science and technology performance. The performance measures/targets for the management/operational goals shall be established by agreement with DOE. Confirmation of Contractor assurance results shall be the
primary method for evaluating Contract management/operational performance. The types and level of evaluation utilized to confirm results are dependent on the Contracting Officer’s determination of the effectiveness of the Contractor’s assurance system and is described in the Section H Contract clause, entitled “Contractor Assurance System.” [M600]

(b) 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 measures/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. [M600]

(End of Clause)

H-18 Shared Services

(a) Alternative Proposals

The Contractor may submit to the Contracting Officer alternative proposals for obtaining services currently provided by other contractors as Shared Services. All proposals will reflect innovative cost-effective approaches whereby the Contractor will obtain services in a manner reflecting the best interests of the Government and the Contractor. The Contractor will consider contractual and regulatory constraints in all proposals. The Contractor must submit proposals under this clause to the Contracting Officer a minimum of 90 calendar days in advance of the proposed date for transitioning services. The Contracting Officer shall accept, reject, or conditionally accept the proposal, in writing, within 90 calendar days of receipt. The Contracting Officer shall provide an explanation for any rejection.

(b) Cost-Efficiency Comparison Information

To facilitate the cost-efficiency comparisons required under paragraph (a) above, DOE agrees to provide the contractor’s allocation methodology information associated with services provided by other Hanford Site contractors to the fullest extent possible and at the highest level sufficient to perform such analysis. DOE will deliver the information to the Contractor within 30 days of the Contractor's request or such time period as agreed to by the Parties.

(End of Clause) [M1067]
H-19 Lobbying Restriction

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. The Contractor also agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

[M1067]

H-20 Intellectual and Scientific Freedom

(a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to national interests.

(b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of scientific, engineering, and technical work performed by Laboratory personnel.

(c) The Parties also recognize that protecting proprietary and national security interest, information and assets is a paramount concern and duty of the Laboratory and its personnel.

(d) In order to further the goals of the Laboratory and the national interest, as well as protect proprietary information and national security, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open public debate and in scientific, educational, or professional meetings and conferences, subject to limitations included in technology transfer agreements, strategic partnership project agreements, and such other limitations as may be required by the terms of this contract. Nothing in this clause is intended to interfere with the obligations of the Parties, including all Laboratory personnel, to protect proprietary, classified, Privacy Act, or other sensitive information as provided for or required by law, regulation, Department of Energy Directive or Order, or elsewhere in this contract.

(End of Clause)

[M1089]
H-21 Advance Understandings on Allowable Costs

Allowable costs under this Contract shall be determined according to the requirements of DEAR 970.5232-2, Payments and Advances. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable under this Contract to the extent indicated:

1) Foreign Rental Car Insurance - Foreign rental car insurance is allowable to the extent it is not covered by an existing insurance plan being billed to the government or is required by law and is not personal in nature.

2) Home Office Expenses - Home Office residual expenses are allowable to the extent that such expenses are allowable per FAR 31.2 and DEAR 970.3102 and are allocable consistent with FAR 31.2 and the Cost Accounting Standards. These costs are capped by Fiscal Year (FY) at: (a) $5.4M for Fiscal Year (FY) 2017, (b) $2.5M for FY 2018, FY 2019 and FY 2020, (c) $2.4M for FY 2021 and (d) $2.1M for FY 2022. If the cap does not adequately cover Battelle Home Office residual costs as allowable under the FAR, DOE will consider a revision to the cap if sufficient justification is provided by Battelle. [M1163]

3) Operational Support and Strategic Sourcing – In circumstances when there is a clear advantage to the Government for operational support to be sourced from Battelle Home Office in a project or non-project (i.e., overhead) capacity or when Battelle Pacific Northwest Division performs non-project work for Battelle home office, whereas, the cost is charged to an indirect account that is allocated over a base to include Battelle Pacific Northwest Division will be deemed allowable to the extent the costs are in accordance with FAR Part 31.2, DEAR 970.3102 and Cost Accounting Standards under this Contract. Additionally, the following measures shall be taken for the described costs:

   a) Allocation of cost from Battelle Home Office for corporate provided services, such as contractor assurance, Laboratory Operations, insurance, risk management, payroll, benefits, taxes, corporate leases essential for the Contractor to operate PNNL. The Contractor will submit an annual true-up of these costs by July 31 of the following fiscal year.

   b) Costs for Battelle Home Office provided software licenses, subscriptions, and memberships that are a part of the corporate allocations only require notification to DOE five (5) days prior to the expenditure of funds, to the extent practicable.

   c) Costs of work performed by Battelle Home Office that are charged to a Battelle Pacific Northwest Division overhead account, such as
logistics support, benefit claims, essential for the Contractor to operate PNNL. DOE notification is required five (5) days prior to the start of work to and/or to the expenditure of funds, to the extent practicable;

d) Costs for work performed by Battelle Home Office that are directly charged to projects, such as project Inter-Laboratory Agreements (ILA). DOE notification is required five (5) days prior to the start of work to the extent practicable and/or prior to the expenditure of funds, to the extent practicable;

e) Costs for work performed by Battelle Pacific Northwest Division for Battelle Home Office that are charged to a home office indirect account, such as labor costs of support staff and facility maintenance on Battelle-owned facilities. DOE notification is required five (5) days prior to the start of work and/or prior to the expenditure of funds, to the extent practicable.

* For Clause H-21(3) ONLY, Battelle Home Office shall be defined as any Battelle segment, division, home office, subsidiary, or affiliate other than Battelle Pacific Northwest division.

[M1163]

4) **Stipends and payments, if not otherwise unallowable under any other term of the contract, made to reimburse travel or other expenses** - Researchers and students who are not employed under this Contract but are participating in research, educational or training activities under this Contract are allowable to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved in writing by the Contracting Officer. (Deviation authorized from FAR 31.205-44 (e))

5) **Tuition Reimbursement** – Tuition and fees for staff who are employed under this Contract are allowable to the extent the staff continue their employment during the period of reimbursement and this cost is not otherwise unallowable.

6) **Payments, if not otherwise unallowable under any other term of the contract, to educational institutions** - Tuition and fees for researchers and students who are not employed under this Contract but are participating in research, educational or training activities under this Contract, or institutional allowances in connection with fellowship or other research, educational or training programs are allowable. (Deviation authorized from FAR 31.205-44 (e))

7) **Rewards & Recognition** - The cost incurred by the Contractor will be allowable, to the extent specified under FAR 31.205-6 (f), and as applicable to work under this Contract for administering the Contractor’s Recognition and
Reward Program for the Commercialization of Intellectual Property as described in the program description. Such costs shall include cash awards and rewards and recognition events to the extent that they are not otherwise unallowable.

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

9) **ISM Awareness Program** - PNNL has an Integrated Safety Management (ISM) Awareness Program (ISMAP) which is separate and distinct from the Laboratory’s variable pay programs. ISMAP includes tangible awards valued at less than $25 each. The ISMAP awards are for PNNL staff for having participated in educational and survey safety activities that are linked to ISM program performance improvement and achievement or for supporting staff recognition and awareness in the areas of safety and wellness. Costs associated with the “ISM Awareness Program” are allowable subject to an annual ceiling amount. ISM Awareness Program tangible awards will not promote the Battelle name or logo. However, the PNNL branding logo is acceptable (i.e. Pacific Northwest National Laboratory branding logo, along with Operated by Battelle for the U.S. Department of Energy). Allowable cost is limited to tangible awards for PNNL staff, and any awards to non-PNNL employees will be an unallowable cost.

10) **Management and Operations Sustainability Program** – The PNNL Site Sustainability Plan is to reduce Greenhouse Gas emissions in accordance with Departmental goals. To this end, Battelle is authorized up to $10,000 for use in creating and implementing sustainability initiatives to include tangible awards valued at less than $25 each. Tangible awards will not promote the Battelle name or logo. However, the PNNL branding logo is acceptable (i.e. Pacific Northwest National Laboratory branding logo, along with Operated by Battelle for the U.S. Department of Energy). Allowable cost is limited to tangible awards for PNNL staff, and any award to non-PNNL employees will be an unallowable cost. [M881]

11) **Counterintelligence Awareness Program** – PNNL has a Counterintelligence Awareness Program which is separate and distinct from the Laboratory’s variable pay programs. This program includes tangible awards valued at less than $25 each. The awards are to increase the visibility of counterintelligence with PNNL staff and to communicate key messages/objectives. Costs associated with the “Counterintelligence Awareness Program” are allowable subject to an annual ceiling amount ($1,500). Counterintelligence Awareness
Program tangible awards will not promote the Battelle name or logo. However, the PNNL branding logo is acceptable (i.e. Pacific Northwest National Laboratory branding logo, along with Operated by Battelle for the U.S. Department of Energy). Allowable cost is limited to tangible awards for PNNL staff, and any awards to non-PNNL employees will be an unallowable cost. [M1000]

12) **Extended Domestic Travel** – For any assignment of Contractor personnel to a domestic location expected to exceed 30 consecutive calendar days, the contractor will be reimbursed the lesser of temporary relocation costs or a reduced per diem. The Contractor shall cap Meals and Incidental Expenses (M&IE) and lodging at 55% of per diem if utilizing Federal Travel Regulation (FTR) stipulated per diems. In no case shall actual expenditures exceed 55% of FTR per diem rates. Per diem will not be reimbursed for any extended domestic travel which exceeds three (3) years. Per diem costs will not be reimbursed for any extended domestic travel unless the contractor employee maintains a residence at the permanent duty station. [M1110]

(End of Clause)

H-22 RESERVED [M1221]

H-23 **Electronic Subcontracting Reporting System (AL 2006-01)**

The requirement for the submittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The offeror’s subcontracting plan shall include assurances that the offeror will (1) submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports at all tiers, in eSRS.

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.

(End of Clause) [M432]

H-24 **Joint Global Climate Change Research Institute**

The Department of Energy directive titled, “Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington,
D.C., Area”, or its successor, is not applicable to PNNL employees whose permanent duty station is at the Joint Global Climate Change Research Institute in College Park, Maryland, provided that those employees are performing or supporting research and development work. However, if at any time any of those employees are assigned to a position to provide technical expertise and/or experience in support of program missions, the Contractor must meet all of the applicable requirements of the above-mentioned directive or its successor for those employees.

(End of Clause)

[M881]

H-25 Information Technology Acquisitions

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology’s website [http://checklists.nist.gov](http://checklists.nist.gov) or approved secure configurations that
are commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions. [M490]

H-26 Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification Under Public Law 85-804

A. The term “a risk defined in this contract as unusually hazardous or nuclear” as used in FAR Clause 52.250-1 means the risk of legal liability to third parties (including legal costs as defined in paragraph (jj) of section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2014(jj), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act, 42 U.S.C. §2010) arising from actions or inactions in the course of the following work performed by the Contractor under the Contract:

1. Providing assistance in implementing physical security at nuclear and radiological facilities worldwide to ensure effective safeguards and security of weapons-useable nuclear materials and high-risk radiological materials both domestically and internationally under Department of Energy’s (DOE) Global Threat Reduction Initiative (GTRI). Supporting activities shall include vulnerability assessments; design and installation of physical security systems; material consolidation; secure transportation; materials disposition and conversion to less attractive forms; implementation of detection and measurement technologies; and security operations training.

2. Providing assistance in DOE’s Material Protection Control and Accounting (MPC&A) program including cooperative work outside the United States on the design and implementation of MPC&A systems for facilities processing, handling, and storing nuclear materials, and the transportation of nuclear materials; provision of U.S.-manufactured equipment, and procurement of equipment for installation in facilities in order to implement the above systems; training in the design, use and assessment of MPC&A systems, export control, and facility transition support.

3. Participation in the DOE/National Nuclear Security Administration program(s) focusing on the complete denuclearization of the Democratic People’s Republic of Korea (DPRK), including cooperative work outside the United States on the disablement and dismantlement of all declared and undeclared DPRK nuclear facilities and the verification of activities, equipment, and materials at said facilities; inspection, packaging, removal, securing in place, transportation, storage and disposition of spent nuclear fuel, nuclear materials (including uranium, highly-enriched uranium, and plutonium), and other radiological materials and equipment; and the
conversion of any reactors using highly-enriched uranium fuel to low-
enriched uranium fuel.

(4) Participation in tasks or activities by the Contractor or its subcontractors on or after March 11, 2011 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration as an element of activities taken in response to the Japanese earthquake and tsunami, including efforts to address and assess damage to nuclear power plants and potential radioactive releases from these plants now and into the future. [M764]

(5) Other activities relating to nonproliferation, emergency response, anti-terrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities or devices, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary, and further provided that the request or approval specifically identifies a particular project involving one of those activities and makes the indemnity provided by this clause applicable to that particular project under the contract.

B. The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price-Anderson Act (section 170d of the Atomic Energy Act of 1954, as amended 42 U.S.C. §2210d) or where the indemnification provided by the Price Anderson Act is limited by the restriction on public liability imposed by section 170e of the Atomic Energy Act of 1954, as amended, (42 U.S.C. §2210e) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the Contractor is exposed. [M920]

H-27 Contractor Assurance System

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

(2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.

(3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.

(4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor’s work process and to carry out independent risk and vulnerability studies.

(5) Identification and correction of negative performance/compliance trends before they become significant issues.

(6) Integration of the assurance system with other management systems including Integrated Safety management.

(7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.

(8) Continuous feedback and performance improvement.

(9) An implementation plan (if needed) that considers and mitigates risks.

(10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

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

(b) The Government may revise its level and/or mix of oversight of this Contract when the Contracting Officer determines that the assurance system is or is not operating effectively.
H-28 Implementation of Section I Clauses

(a) For purposes of identifying the use of Alternates and Deviations to FAR and DEAR clauses, **bold italic** lettering will be used where the language contained within a FAR or DEAR clause is providing alternative language or a deviation to the affected clause.

(b) For purposes of implementation of Contract Clause entitled “Personal Identity Verification of Contractor Personnel”, the Parties agree to the following:

1) The agency personal identity verification procedures that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201 and that must be complied with, are the applicable DOE directives included in Appendix D, List of Applicable DOE Directives & External Requirements.

2) The Contractor shall only account for Government-provided identification issued through processes managed by the Contractor in connection with this Contract.

3) The Contractor shall return or disposition the Government-provided identification issued to Contractor employees in connection with HSPD-12 credentials in the manner approved by DOE.

(c) For purposes of implementation of Contract Clause entitled “Payments and Advances,” the Parties agree to the following:

1) **Monthly Provisional Fee Payments.** The Contractor may withdraw against the payments cleared financing arrangement, up to one-twelfth (1/12) of 90% of the performance fee for the fiscal year, on the first day of each month, unless otherwise instructed in writing by the Contracting Officer.

2) **Final Fee Payment.** Following DOE’s determination of Total Available Fee Amount Earned, the Contractor is authorized to withdraw any amount of earned fee over the amount previously paid on a provisional basis from the payments cleared financing arrangement. In the event DOE determines there has been an overpayment to the Contractor, such overpayment plus interest shall be redeposited to the payments cleared financing arrangement within 30 calendar days, or otherwise used as directed by the Contracting Officer. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
(d) At this time, the FSRS system does not accept the information described in this Clause for reporting with respect to M&O contracts. If the FSRS system becomes operational for M&O contracts in the future then the following requirements of this Clause will be effective. For purposes of implementation of the Contract clause entitled "Reporting Executive Compensation and First-Tier Subcontract Awards", the Parties agree that the Contractor is not required to comply with the sections of the Clause that require reporting into FSRS. However, DOE requests that the Contractor maintain the data in case it is requested. Further, if first-tier subcontractors are unwilling to share executive compensation information with the Contractor, then the Contractor shall advise the first-tier subcontractor that it will be responsible for maintaining the information and will provide the information if requested. [M1067]

(e) Pursuant to Contract Clause DEAR 970.5232-7 – Financial Management System, DOE approval is required for systems that have impact to DOE’s financial reporting and/or systems where financial data quality is impacted via alteration of data or system calculations. For purposes of implementation, The Financial Management system includes the Laboratory’s current existing integrated accounting system (FPS) and any subsystems that impact that following areas: budget (including funds control and management), payroll system, labor cost distribution, accounts receivable, accounts payable, acquisition, inventory, cost management (including project costing), general ledger, travel, and the financial aspects of the Asset Management Systems. [M1089]

The Plan as required in DEAR 970.5232-7 is applicable when new systems or subsystems are procured or developed. Submittal of the Plan for approval is also required when the procurement and development costs for enhanced system(s) or subsystem(s) will exceed $500,000.00 (estimate at completion (EAC)). The Plan when required should provide a summary of proposed changes from the previously approved plan as well as adequate details for each system, subsystem or major enhancements to include a basic description of the project scope (i.e. purpose, issues, risks, and desired outcomes), including a high-level estimated budget and schedule

If approval of new systems, subsystems, major enhancements or upgrades to existing systems has been provided for in a previously approved plan, but work was not initiated or completed in the current year, the Contractor does not need to request subsequent approval. PNSO’s expectation is that the Contractor will provide at a minimum an annual status report of the previously approved item and a status briefing shall be provided by October 30th.

If the Contractor’s planned implementation for the systems described in the Plan deviates for scope, schedule or cost reasons and is requested by the Contracting Officer, the Contractor shall submit such deviation to the PNSO Contracting Officer for approval 30 days prior to implementing the change. [M995]
(f) To facilitate continuity of performance and Contract administration, all agreements, memorandums of understanding, and contractual assumptions which have been appropriately agreed to in writing by both Parties prior to this Contract extension will continue in effect according to the terms thereof unless they have been superseded or, if they are in conflict with any other terms and conditions of this Contract extension.

(g) For purposes of the clause in this Contract titled “Access to and Ownership of Records”, it is understood and agreed that the Contractor-owned legal records that are subject to an attorney-client privilege or an attorney-work-product privilege require special handling to preserve these privileges. Therefore, the Parties agree that inspection, copying, or audit of any such records will only be conducted by DOE Counsel or its designees.

(h) Prior to the issuance of a work authorization or direction concerning continuation of activities of the contract, the Contractor shall provide a detailed description of work, identification of hazards/risks and legacy considerations and controls that will be instituted to mitigate the hazards/risks and legacy considerations, a budget of estimated costs, and a schedule of performance for the work, and shall provide or make available those items through an approved approach or as directed by the Contracting Officer or designee. The “estimate” referred to in paragraph (e) of the clause entitled, “DEAR 970.5211-1, Work Authorization” shall be defined as total available funds, and standard monthly budget reports meet the notification requirements of this clause.

(End of Clause)

[H-29] Agreements for Commercializing Technology

This H-clause authorizes the use of the mechanism: Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this H-clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor’s risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessary aimed at commercialization (e.g., technical assistance, training, studies), but which facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated with this M&O contract for the purposes of conducting technical services, training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor’s custody or available to the M&O Contractor under this M&O contract (unless specifically excluded.

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by the Contracting Officer). For M&O Contractor activities conducted under authority of this H-clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph 9 below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the M&O Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

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

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

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

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

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

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

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

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

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

**DISCLAIMER**

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

4. Contracting Authority.

a. Subject to DOE approval as described in this paragraph, the M&O Contractor is hereby authorized to negotiate terms and conditions between the M&O Contractor and third parties when entering into ACT agreements. The M&O Contractor will have no authority to bind the Government in any way with such terms and conditions. The Government will have no obligation to the M&O Contractor due to such terms and conditions.

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

i. A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a Statement of Work; an estimate of costs incurred under the M&O contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011-013; a signed certification by the private party(ies) that the M&O Contractor offered the option to use CRADA and SPP alternatives (see paragraph 7a) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized to fund the agreement except as authorized under the FedACT pilot (see paragraph 14 below); applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.
ii. If the M&O Contractor, the M&O Contractor’s parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor’s parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph 7).

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

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

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

i. The M&O Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three (3) business days. Upon such a determination from the Contracting Officer, the M&O Contractor may begin work under the ACT agreement at the M&O Contractor’s risk pending final approval of the complete Package. The M&O Contractor must submit a complete Package,
as identified in subparagraph 4.b. above, within (10) business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the M&O Contractor, as no Federal funds will be used to fund any work conducted under this H-clause.

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

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

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

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

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

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

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

b. **Priority of Work.** The M&O Contractor shall not give work under ACT any special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency’s priority of work, considering the M&O Contractor’s input.

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

d. **Right of Inquiry for ACT IP Designation.** DOE Patent Counsel may inquire into the M&O Contractor’s designation of any invention or data as arising under an ACT transaction. The M&O Contractor is responsible for curing any defect identified in such inquiry, and if the M&O Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.
8. Intellectual Property. Disposition of intellectual property (IP) arising from work conducted under this H-clause shall be governed by Class Waiver W(C)-2011-013 (ACT Class Waiver) which is incorporated herein by reference.

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

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

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

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

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

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

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

   h. Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.
9. **Contractor Liability and Indemnification.**

a.  **General Indemnity.**

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

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

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

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

c. **Product Liability Indemnity.**

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

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

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

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

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

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

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

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

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

14. FedACT Pilot. Under this paragraph the DOE is authorizing a 3-year pilot program for Federally funded ACT (FedACT). FedACT contracts are ACT agreements between the M&O Contractor and a non-Federal third party partner, where a portion of the project funding originates from a Federal agency (i.e., Federal appropriations). In most cases, the industry partner’s original source of funds will have been as a result of a contract or financial assistance award from the Federal agency. Any agreement that includes Federal funds must be performed under the FedACT pilot. Federal funds used to support a FedACT project must solely be used to carry out the purposes of the Federal award. FedACT does not include agreements directly funded from another Federal agency. DOE and the M&O Contractor recognize that FedACT is a new mechanism and subject to modifications as more data and experience are realized. During the FedACT pilot either party may suggest changes to the program based on the experiences gained. Furthermore, the M&O Contractor recognizes that the Department may decide to end the FedACT pilot at any time and that termination of the FedACT pilot by the Department will be in accordance with this paragraph. During the FedACT pilot the M&O Contractor is permitted to negotiate and execute such agreements, subject to DOE approval, as described in paragraph 4 above and as set forth herein. The following additional requirements apply:

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

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

i. The amount of and explanation for the cost difference between performing the work as an ACT agreement as compared with an SPP or CRADA; and

ii. A detailed description of the risk and/or consideration offered the participant by the M&O Contractor in exchange for charging beyond full cost recovery. This information shall also be included in the statement of consideration contained in the ACT proposal package submitted to the Contracting Officer.

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

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

e. DOE’s approval to negotiate and execute a FedACT agreement under this paragraph is for the sole purpose of evaluating and considering the M&O Contractor and DOE’s processes and procedures for implementing such FedACT agreements and does not in any way provide the Contractor authority beyond the scope of this paragraph or imply that permanent authority shall be forthcoming.

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

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

h. Termination. The FedACT Pilot implemented by this H-clause will terminate three years from the date AL 2018-06 is issued, unless renewed by the Contracting Officer. The Government may provide the M&O Contractor with written notice to terminate the M&O Contractor’s authority to conduct FedACT work under this H-clause at any time. If the Contractor’s authority to conduct FedACT work under this H-clause has expired or been terminated, the M&O Contractor will be permitted, subject to any other provisions of this
H-30 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.

(End of clause)

H-31 Employee Compensation: Pay and Benefits

(a) Total Compensation System

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

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

a. Philosophy and strategy for all pay delivery programs.

b. System for establishing a job worth hierarchy.

c. Method for relating internal job worth hierarchy to external market.

d. System that links individual and/or group performance to compensation decisions.

e. Method for planning and monitoring the expenditure of funds.

f. Method for ensuring compliance with applicable laws and regulations.

g. System for communicating the programs to employees.

h. System for internal controls and self-assessment.
i. System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Reports and Information

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

(1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.

(2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(4)(ii) 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) The Compensation and Benefits report no later than March 1 of each year.

(c) Pay and Benefit Programs

The Contractor shall maintain pay and benefit programs for its employees; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) 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 proposed major compensation program design changes prior to implementation.

(ii) Variable pay programs/incentives. If not already authorized under Section J Appendix A of the Contract, a justification shall be provided with proposed costs and impacts to budget, if any.

(iii) In the absence of Departmental policy to the contrary (e.g. Secretarial pay freeze,) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) to the Contracting
Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:

- The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey’s salary increase projected for the CIP year.
- The Promotion/Adjustment fund does not exceed 1% in total.
- The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
- Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Departmental CIP guidance.
- No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories.

(iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability.

(v) The Compensation Increase Plan (CIP) for a Contractor that has received Contracting Officer approval for having an Employee Compensation Program with the components identified under (a)(1) above should include the following components and data:

(1) Market analysis summary, including a comparison of average pay to market average pay.

(2) Merit Fund requests for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt)

(3) Aging factors used for escalating survey data

(4) Projection of escalation in the market

(5) Information to support proposed structure adjustments, if any.

(6) Analysis to support special adjustments or promotions that exceed the 1%
Promotion/Adjustment fund authorized under Section J Appendix A.

(7) Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts.

(8) A discussion of the impact of budget and business constraints on the CIP amount.

(9) Information to support a request for variable pay beyond that authorized under Section J Appendix A.

(10)

(a) Reimbursed salary levels are used to establish the annual CIP fund.

(b) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.

(c) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.

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

(e) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

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

- Minor shift is defined as up to 10% of the approved merit funds from one employment category to another (e.g., 10%
of Admin merit funds shifted to Technician employment category)

- Total merit increase expenditures will be limited to the total merit fund approved.
- Contractors will notify the Contracting Officer that funds have been shifted.

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

C. The Contracting Officer’s approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel as indicated in (c)(1)(A)(iii) above. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract. The Contractor shall not be reimbursed for the Top Contractor Official’s incentive compensation. The base salary reimbursement level for the Top Contractor Official establishes the maximum allowable salary reimbursement under the Contract when compared to subordinate compensation, which would include base salary and any potential incentive compensation under an incentive compensation agreement. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

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

(i) Voluntarily separates, resigns or retires from employment (unless associated with a workforce restructuring action in accordance with Section J Appendix A, Section V, Reductions in Contractor Employment)

(ii) Is offered employment with a successor/replacement contractor,

(iii) Is offered employment with a parent or affiliated company, or
(iv) Is discharged for cause.

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

(d) Pension and Other Benefit Programs

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

(2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer’s approval of Contractor actions pursuant to an approved “Employee Benefits Value Study” and an “Employee Benefits Cost Survey Comparison” as described below.

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

(A) The Ben-Val, every three years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire,) which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor 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.

**(B)** An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor’s employee benefits cost for Employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor’s Bureau of Labor Statistics or other Contracting Officer approved broad based national survey. [M1140]

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

(5) When the benefits 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 result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer. [M1140]

(6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan. [M1140]

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

(8) Cost reimbursement for post-retirement benefits (PRBs) is contingent on meeting PNNL service eligibility requirements for PRBs, with not less than 5 years under a DOE cost reimbursement contract(s). Annually, the Contractor will provide the Contracting Officer with a report identifying Laboratory retirees eligible for post-retirement benefits. The report will provide a service history for each retiree, specifying years at the Laboratory, under other DOE cost reimbursement contracts, and applicable corporate service. Unless required by Federal or State law, advance funding of PRBs is not allowable.
(9) Each contractor sponsoring a Defined Benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the contractor submission (see (f)(6) below for Pension Management Plan requirements).

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

(11) The Contractor previously established an account in a voluntary employees beneficiary association (VEBA) to accrue funds to pay its portion of the retiree medical liability attributable to non-1830 contract commitments. As of the effective date of this contract, and concurrent with the cessation of non-1830 work, the VEBA assets exceed the Contractor’s corresponding non-1830 liability for retiree medical. In addition, non-1830 pension assets satisfy the non-1830 liability. The Contractor will not seek reimbursement for the value of the excess VEBA assets but will apply such excess to future retiree medical claims in recognition that the Contractor has no further non-1830 liability under the pension plan or the retiree medical plan prior to the effective date of this contract. The Contractor will not seek reimbursement from DOE for retiree medical claims paid from the VEBA until the assets of the VEBA have been exhausted. The Contractor will provide an annual report to the Contracting Officer on the benefits paid from the VEBA in the fiscal year as well as the balance of VEBA assets remaining at the end of the fiscal year.

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

(1) Employees working for the Contractor shall only accrue credit for service under this Contract and the prior Use Permit Agreement (1831 agreement) after the date of original Contract award. For vesting and participation purposes, service under other members of the controlled group will be included as required by law.

(2) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.
(f) **Basic Requirements**

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

1. The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC).

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

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

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

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

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

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

(1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

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

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

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

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

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

(i) Changes to Pension Plans

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

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

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

   B. an analysis of the impact of any proposed changes on costs and if applicable, actuarial accrued liabilities;

   C. any projected withdrawal liability;

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

   E. the Summary Plan Description; and,
(F) any such additional information as requested by the Contracting Officer.

(2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable [see (d)(1) above.] The justification must:

(A) Demonstrate the effect of the plan changes on the Contract net benefit value or percent of payroll benefit costs;

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

(C) Provide the basis of determining the estimated savings or cost. [M1140]

(j) Terminating Operations

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

(1) No further benefits for service shall accrue.

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

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

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

(5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
(k) **Terminating Plans**

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

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

3. Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.

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

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

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

7. After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(l) **Special Programs**

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

(1) **Commingled Plans.** Cover employees from the contractor's private operations and its DOE contract work. As of 10/01/2012, the PNNL plan does not qualify as a Commingled Plan.

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

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

(4) **Defined Contribution Pension Plan.** Provides benefits to each participant based on the amount held in the participant’s account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant’s account.

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

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

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

(8) **Separate Plan.** Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the contractor as the plan sponsor.
(9) **Spun-off Plan.** A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant’s benefits shall be no less than before the event, when calculated on a “plan termination basis.”

(End of clause)

[M1067]

### H-32 Group Pension Plans

Staff members of the Contractor’s Pacific Northwest National Laboratories (PNNL) assigned to or performing work under the Contract may participate in the Contractor’s Group Pension Plans (the Plans) applicable to PNNL in accordance with the terms of the Plans. The Group Pension Plans are trusteed plans described in items (a) and (b) below and with respect to the Plans, the Contractor and DOE agree as follows:

(a) “Pension Plan of Pacific Northwest Laboratories, Battelle Memorial Institute,” [PNNL Plan] (applicable to non-bargaining unit employees) effective July 1, 1987, and as the foregoing PNNL Plan may be amended from time to time by the Contractor’s Board of Trustees; and as determined to be reimbursable by the DOE Contracting Officer.

(b) “Hanford Contractors Multi Employer Defined Benefit Pension Plan for HAMTC Represented Employees,” [HAMTC Plan] (applicable to bargaining unit employees) effective April 1, 1987; and, as the foregoing HAMTC Plan may be amended from time to time by the Plan Administrator in cooperation with the Administrative Committee; as determined to be reimbursable by the DOE Contracting Officer.

(c) To the extent practicable all non-settlor administrative costs shall be charged to the pension plan rather than to the operating budget to the maximum extent permitted by Department of Labor regulations.

(d) Payments and Transfers of Assets

1. If transfers of Plan assets are made to a successor plan in the form of investment holdings, such holdings shall include cash, equity securities, and fixed income securities. Such assets shall be allocated on a pro rata basis, with the prorating for fixed income assets based on rating and sector classification.

2. Battelle will transfer Plan assets at a rate at least sufficient to meet the cash flow requirements of transferred staff members who go into benefit status after the effective date of Contract termination.
(e) With respect to the Multi-Employer Pension Plan for HAMTC Represented Employees (paragraph (b) above), the Contractor and DOE agree that effective April 1, 1987, pursuant to a collective bargaining agreement, the Contractor became a participating employer in the Hanford Contractor Multi-Employer Pension Plan for HAMTC Represented Employees. All assets and liabilities of the “Employees Retirement Plan of Battelle Memorial Institute” were transferred to and merged with the said Multi-Employer Plan.

(f) The HAMTC Plan fund, not the Contractor, shall be liable for costs incurred in the course of administration (actuary fees, reports, and similar expenses); provided, however, that costs for employee communications, sign up and termination, payroll, and similar expenses are allowable as normal operating expenses to the extent applicable to work under the Contract.

(g) Upon expiration or termination of the Contract, all liability of the Contractor with respect to the HAMTC Plan shall cease. The Contractor shall have no claim to any HAMTC Plan assets in excess of HAMTC Plan liabilities, nor shall the Contractor be required to fund any excess of HAMTC Plan liabilities over HAMTC Plan assets. DOE agrees that all costs, including cost of defense, from any withdrawal liability arising under federal law by reason of the Contractor’s withdrawal from the Multi-Employer Plan shall be an allowable cost under the Contract subject to the provisions of paragraph (j) of the clause entitled “Payments and Advances”.

(End of Clause)

[M991]

H-33 Group Savings Plans

The Contractor maintains or is a participating employer in savings plans for eligible non-bargaining employees. In addition, the Contractor is a participating employer in a multi-employer plan for bargaining unit employees. The savings plans are trusteed plans described in the following two documents entitled “Battelle Employees’ Savings Plan”, and “Hanford Contractors Multi-Employer Savings Plan for HAMTC Represented Employees.” The plans must be established and maintained as qualified defined contribution plans under the regulations of the Internal Revenue Service. The Plan and Trust documents and any amendments thereto which effect substantive changes or increase costs are subject to the approval of the Contracting Officer. With respect to the Plans, the parties agree as follows:

(a) Costs of employer matching contributions incurred and accrued under the terms of the Plans are allowable to the extent applicable to Contract work. To the extent permitted by law or regulation, the Plans funds, not the Contractor, shall be liable for the costs of administration.
(b) The Contractor will provide the Contracting Officer with annual accounting reports within eight months after the close of a Plan year. A copy of IRS Form 5500, together with any supplemental or supporting documents submitted therewith, will be provided to DOE each year when prepared by the Contractor, which may be provided in lieu of the accounting report required by this provision.

(c) Employee forfeitures of accrued benefits shall be in accordance with the terms of the Plans and such forfeitures shall be used to reduce Contractor contributions made on behalf of remaining participating employees.

(d) In the event of Contract expiration or termination, the Contractor, if requested by DOE to do so, will transfer assets and liabilities to a replacement contractor’s plan.

(e) In the event of Plan terminations, vest immediately one hundred percent in the Plan participants’ individual accounts.

(f) Upon expiration or termination of the Contract, all liability of the Contractor with respect to the Hanford Contractors Multi-Employer Savings Plan for HAMTC Represented Employees shall cease. DOE agrees that all costs, including cost of defense from any withdrawal liability arising under federal law by reason of the Contractor’s withdrawal from the Multi-Employer Plan shall be an allowable cost under the Contract, subject to the provisions of paragraph (j) of the clause entitled “Payments and Advances”.

(g) The Contractor will take no action concerning termination, merger, spin-off, or other action affecting the status of the Plans without the approval of the DOE.

(End of Clause)

[M943]

H-34 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 the Pacific Northwest National Laboratory) (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.

(End of clause)

H-35 Labor Relations

(a) The Contractor shall pursuant to federal law respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(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 submit to the Contracting Officer for approval any collective bargaining proposal which exceeds the approved economic bargaining parameters.

(c) The Contractor will seek to achieve the 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 labor relations issues affecting Laboratory operations such as; 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.

(End of clause)

[M943]

H-36 Key Positions

(a) The key positions listed below are considered essential to the performance of the laboratory mission, operations and/or contractor assurance processes under this Contract and require advance notification of any replacement(s) to the Contracting Officer:

- Associate Laboratory Directors;
- Chief Financial Officer;
- Chief Information Officer;
- Director, Facilities and Operations Division;
- Director, Environment, Health, Safety, & Security Division;
- Chief Audit Executive;
- General Counsel

(b) DEAR 952.215-70, “Key Personnel,” may invoke additional requirements if any of the above positions are collateral duties of Key Personnel.

(End of clause)

[M991]
H-37 Conference Management

The Contractor agrees that:

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

(b) "Conference" is defined in the Federal Travel Regulation as, "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404." Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indications of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as conferences without meeting all of the criteria listed above but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.

Exemptions. For the purposes of this clause, the exemptions below apply, and these types of activities should not be considered to be conferences even if the event meets the general definition of conference.

(1) Meetings necessary to carry out statutory oversight functions. This exemption would include activities such as investigations, inspections, audits, or non-conference planning site visits.

(2) Meetings to consider internal agency business matters held in Federal facilities. This exemption would include activities such as meetings that take place as part of an organization's regular course of business, do not exhibit indicia of a formal conference as outlined above, and take place in a Federal facility.

(3) Bi-lateral and multi-lateral international cooperation engagements that do not exhibit indicia of a formal conference as outlined above that are focused on diplomatic relations.

(4) Formal classroom training which does not exhibit indicia of a formal conference as outlined above.
(5) Meetings such as Advisory Committee and Federal Advisory Committee meetings, Solicitation/Funding Opportunity Announcement Review Board meetings, peer review/objective review panel meetings, evaluation panel/board meetings, and program kick-off and review meetings (including those for grants and contracts).

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

(1) The Contractor provides funding to plan, promote, or implement an event, except in instances where the Contractor:
   (i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or
   (ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

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

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

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

   (1) Conference title, description, and date;
   (2) Location and venue;
   (3) Description of any unusual expenses (e.g., promotional items);
   (4) Description of contracting procedures used (e.g., competition for space/support);
   (5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees); and
   (6) Number of attendees.

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

(g) For DOE-sponsored conferences, the Contractor will not expend funds on the proposed conference until notified by the Contracting Officer.
(1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:

(i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or

(ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.

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

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

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

(1) Track all conference expenses; and

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

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

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

(End of Clause)

[M1034]
H-38 Management and Operating Contractor (M&O) Subcontract Reporting (Sep 2015)

a) Definitions. As used in this clause—

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

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

“Transaction” means any awarded contract, agreement, order, or modification, etc. other than one involving an employer-employee relationship) entered into by a DOE M&O prime contractor calling for supplies and services (including construction) required solely for performance of the prime contract.

b) Limited Interim Reporting.

(1) The Contractor shall report no less than the twenty highest dollar value first-tier small business subcontract transactions under the contract by December 1 for the previous fiscal year until the Contractor business systems can report the required data as set forth in paragraph (c) below. Classified subcontracts shall be excluded from the reporting requirement and shall not be counted towards the total number of transactions of the reporting requirement.

(2) Transactions with a corporation, company, or subdivision that is an affiliate of the Contractor are not included in these reports.

(3) The Contractor shall provide the data on first-tier small business subcontract transactions under the contracts, as described in the MOSRC Guide via the Microsoft Excel spreadsheet co-located at https://max.gov in the MOSRC Collaboration Center. The spreadsheet will be submitted to HQProcurementSystems@hq.doe.gov.

c. Full Reporting. The Contractor shall update their business systems and processes to collect and report data to MOSRC in compliance with the MOSRC Guide. The Contractor shall report data in MOSRC for FY17 (and each year thereafter) first-tier small business subcontracting
transactions under the contract. Classified subcontracts shall be excluded from the reporting requirements. All Contractor systems shall be updated in order to provide the first FY17 report in November 2016 for October 2016 transactions.

d. *Pilot M&Os.* Oak Ridge National Laboratory, the National Security Campus at the Kansas City Plant, and the National Renewable Energy Laboratory shall have their business systems updated in order to provide the first FY2016 report in April of 2016 for March of 2016 transactions.

(End of Clause)

H-39  Risk Management and Insurance Programs

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

1. **BASIC REQUIREMENTS**

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

   b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).


   d. The insurance program is being conducted in the government's best interest and at reasonable cost.
e. Upon request the Contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.

f. When purchasing commercial insurance, the contractor shall use a competitive process, when practical, to ensure costs are reasonable.

g. Ensure self-insurance programs include the following elements:

(1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible based on business size, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

(2) If a self-insurance program is approved, it must be executed in full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.

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

(4) Accounting of self-insurance charges in the approved cost accounting system.

(5) Accrual of self-insurance reserve. The Contracting Officer's approval is required if the contract holds a reserve in a contract-held account using DOE funds and would then be predicated upon the following:

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

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

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

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

h. If the Contractor purchases a letter of credit or other financial instrument, the Contractor shall separately identify and account for interest cost on a
Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

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

2. PLAN EXPERIENCE REPORTING. The Contractor shall:

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

   (1) The amount paid for each claim.
   (2) The amount reserved for each claim.
   (3) The direct expenses related to each claim.
   (4) A summary for the year showing total number of claims.
   (5) A total amount for claims paid.
   (6) A total amount reserved for claims.
   (7) The total amount of direct expenses.

b. Upon request, provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at $100,000 or greater).

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

3. TERMINATING OPERATIONS. The Contractor shall:

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

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

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

4. INSURANCE POLICY CANCELLATION. The Contractor shall:
Obtain the written approval of the Contracting Officer for any change in program direction; and

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

(End of Clause)

H-40 Defense and Indemnification of Employees

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

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

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

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

(End of clause)

[M1067]

H-41 Additional Labor Requirements

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

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Laboratory shall assist DOE and/or the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

(End of Clause)

[M1067]

H-42 Sustainability Program

In accordance with Executive Order (EO) 13834: “Efficient Federal Operations”, the Department of Energy is committed to managing its facilities, fleet, and operations in an environmentally preferable and sustainable manner. In the performance of work under this contract, the Contractor shall endeavor to provide its services in a manner that will promote the natural environment, reduce waste, and enhance the efficiency and resilience of Federal infrastructure and operations.

The Site Sustainability Plan will identify the contributions toward meeting the Department's sustainability goals and will be updated annually based on annual guidance provided by the DOE Pacific Northwest Site Office. The Contractor will develop, implement and maintain an Environmental Management System that is certified to the International Organization for Standardization's 14001 standard. The sustainability goals identified within the Contractor's Site Sustainability Plan will be integrated into the Contractor's Environmental Management System.

(End of Clause)

[M1221]
H-43  Multifactor Authentication for Contractor Information Systems (Jun 2016)

The Contractor shall take actions to achieve multifactor authentication (MFA) for standard and privileged user accounts of all classified and unclassified networks by September 30, 2016. Any delays that are due to DOE's failure to provide adequate Government Furnished Equipment in a timely manner will be taken into account in assessing the accomplishment of this requirement.

(End of Clause)

[M1124]

H-44  Real Property Asset Management

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

B. Contractor shall:

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

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

3. Establish a maintenance management program including: a computerized maintenance management system (CMMS); a condition assessment system; a master equipment list; maintenance service levels; a method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies as either deferred maintenance and repair (DM) or repair needs; management of the DM backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.
4. Maintain Facilities Information Management System (FIMS) data and records for all lands, buildings, trailers, and other structures and facilities. FIMS data must be current and verified annually.

(End of Clause)

[M1124]

H-45 Foreign Engagements with DOE National Laboratories

The contractor shall maintain a process to ensure they meet the following expectations for entering into collaborative engagement with foreign entities under the following mechanisms:

1. Memorandum of Understanding (MOU);
2. Strategic Partnership Projects (SPPs);
3. Cooperative Research and Development Agreements (CRADAs); and
4. Agreements for Commercializing Technology (ACT) and/or other contractual instrument.

Prior to negotiation of the proposed laboratory MOU with one or more foreign entities, the draft text of the proposed MOU must undergo review by the Senior Counterintelligence Officer (SCIO) for the laboratory, the laboratory export control office, and DOE Site Office (SO) counsel, followed by HQ review. HQ review of such MOUs requires pre-negotiation review and concurrence from each of the following offices:

1. Cognizant Secretarial Office (CSO);
2. Program Secretarial Office (PSO);
3. Office of International Science & Technology Collaboration (IA-42);
4. Cognizant General Counsel Office (GC);
5. Office of Intelligence and Counterintelligence (IN);
6. Office of Nonproliferation and Arms Control (NA-20); and
7. Office of Classification (AU-60), if involving potential access to or use of classified information.

As part of the package submitted for HQ review, laboratories must indicate in writing how the MOU aligns with each of the following principles:
1. In the long-term, there must be a benefit to DOE and/or the U.S. Government from the partnership;

2. The partnership must be consistent with the foreign policy and national security interests and priorities of the U.S. Government;

3. Work under the MOU must comply with all applicable laws, U.S. Government policies and regulations, and DOE procedures;

4. Work under any proposed MOU must be consistent with the long-term goals and objectives of DOE and the relevant DOE programs must be notified;

5. The collaboration should not create a resource burden on a DOE Program Office or DOE Laboratory;

6. The partnership should aim to leverage domestic capabilities to advance U.S. scientific achievement or clean energy technologies and potentially enhance the Department's or laboratory's stature and global leadership;

7. The partnership should aim to advance global efforts in areas related to DOE's missions including, for example, environmental protection and remediation, energy security, development or adoption of clean energy technologies, or nuclear security and nonproliferation; and

8. The partnership should aim to provide benefit to the U.S. economy through lower cost technologies for consumers, export markets for domestic companies, U.S.-based jobs, or similar economic advantages.

In some cases, a foreign entity may require a copy of the agreement in its own language, in addition to English. In such cases, language conformance will be required to ensure the English and foreign language versions agree precisely in meaning. These services must be provided by the Department of State's Office of Language Services, and be coordinated by IA-42, with the costs for such services borne by the cognizant DOE program or laboratory. No laboratory MOU may be signed in a foreign language until the HQ review has been completed and the State Department's Office of Language Services issues DOE an official comparison memo indicating that the two texts have the same meaning in all substantive respects.

An MOU with a foreign entity must be reviewed by HQ at least every five years to ensure these activities remain consistent with U.S. national security and other policies.

HQ review of proposed laboratory work under a contractual mechanism (SPP, CRADAs, Agreements for Commercializing Technology Act, or other Contractual Instrument) with one or more foreign entities is initiated by the laboratory through the Site Office, and requires review and concurrence from each of the following offices:
1. Cognizant Secretarial Office (CSO);
2. Program Secretarial Office (PSO);
3. Office of International Science & Technology Collaboration (IA-42);
4. Cognizant General Counsel Office (GC);
5. Office of Intelligence and Counterintelligence (IN); and
6. Office of Nonproliferation and Arms Control (NA-20).

Based on information provided by the laboratory, the Site Office provides to the appropriate HQ offices, a copy of the abbreviated proposal and any supporting documents, which may include the agreement itself and a full or summary statement of work. A project with a foreign entity must be reviewed by HQ at least every five years to ensure these activities remain consistent with U.S. national security and other policies.

All DOE HQ reviews for both MOUs and contractual instruments should be completed within 20 business days following receipt of the request. A response will be provided by HQ to the SO within the 20-business day timeframe that indicates approval, disapproval, or the need for more time to review the request since some proposals may require additional time to review due to special circumstances. All issues identified by the SO and HQ reviewing offices and communicated to the laboratory must be satisfactorily resolved before negotiation and signature of the proposed MOU or contractual instrument will be authorized.

For MOUs, the laboratory may negotiate and sign the MOU with the foreign entity or entities after all the required reviews are completed and concurrences are received. Any substantive departures from the approved MOU text must be reviewed by SO counsel before the MOU may be signed. Any changes in the identity of the foreign entity or entities must be reviewed by the laboratory's SCIO. A pdf copy of each final, fully executed MOU must be submitted to the IA-42 (at labagreements@hq.doe.gov) within 20 days of signature.

(End of Clause)

[M1124]

H-46 Authorization of Activities Supporting the Institution – Agreement on Costs

1. **Onsite and Offsite Hazardous Material Movement** - In performance of the Contract, notification to DOE is required in advance of any approval to allow the hand carrying onsite material movement between PNNL facilities that exceeds
Material of Trade (MOT) hazardous material limits, has a does rate greater than 4 mrem/hour, is greater than 3% of a minimum critical mass of fissile material, is a select agent or greater than BSL1 quantity, or is safeguards accountable.

2. Use of Funds for Guest Researchers – In performance of the Contract, the use of funds for Guest Researchers will be limited to reimbursement as contemplated by H-21 (4). Guest Researchers must be aligned with active PNNL project(s) and cannot engage in Federal or non-Federal Strategic Partnership Projects (SPP), Cooperative Research and Development Agreement (CRADA) projects, unless authorized by the Contracting Officer. Collaboration as part of Laboratory Directed Research and Development (LDRD) projects requires identification of the Guest Researcher utilization in the LDRD approval package. Guest Researcher should not engage in research projects with, know of, or otherwise be exposed to information that is proprietary or business sensitive to parties other than Battelle.

(End of Clause)

[M1192]

H-47 Applied Technology Markings

Information resulting from U.S. Department of Energy, Office of Nuclear Energy (NE) funded efforts at the Pacific Northwest National Laboratory must be reviewed by the Contractor for any distribution restrictions. Applied Technology Information (AT) markings, as identified under “CUI requirement”, will no longer be required to be managed by the Contractor for NE legacy documents performed from 1970 to June 2006. After removal of AT markings, the legacy documents will require a Derivative Classifier and Export Control review for possible further restrictions and/or public release. The Contractor is required to establish a defined process for managing legacy documents marked as “AT” under NE authority.

(End of Clause)

[M1246]
Part II – Contract Clauses

Section I

Contract Clauses

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I–1  FAR 52.202-1 Definitions (Nov 2013) (As Modified by DEAR 952.201-2) (Feb 2011)

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

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

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

(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies, or;

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

(End of Clause)

[M1067]

I–2  FAR 52.203-3 Gratuities (Apr 1984)

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

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

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

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

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

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

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

(End of Clause)

I–3 FAR 52.203-5 Covenant Against Contingent Fees (May 2014)

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

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

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

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

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

(End of Clause)
I–4 FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sept 2006)

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

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

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

(End of Clause)

I–5 FAR 52.203-7 Anti-Kickback Procedures (May 2014)

(a) Definitions.

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

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

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

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

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

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

(1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and

(2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

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

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

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

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

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

(c)

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

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

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

(4) The Contracting Officer may

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

(ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision
(c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

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

(End of Clause)

I–6 FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)

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

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

(2) Rescind the contract with respect to which --

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

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

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

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

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
(c) The rights and remedies of the Government specified herein are not exclusive and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of Clause)

I–7 FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity
(May 2014)

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of Clause)

[M1067]

I–8 FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)

(a) Definitions. As used in this clause—

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

“Covered Federal action” means any of the following Federal actions:

(1) Awarding any Federal contract.

(2) Making any Federal grant.

(3) Making any Federal loan.

(4) Entering into any cooperative agreement.

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

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B) and include Alaskan Natives.
“Influencing or attempting to influence” means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

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

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

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

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

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

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

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

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

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

(d) Disclosure.

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

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

(e) Penalties.

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

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

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.*

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

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

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

(End of Clause)

I–9 FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)

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

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

“Full cooperation”—

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

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

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

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

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

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

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

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

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

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

(b) Code of business ethics and conduct.

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

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

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

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and
(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3)

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

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

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

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

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

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

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

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

(2) An internal control system.

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

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

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

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

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

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

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

      (1) Monitoring and auditing to detect criminal conduct;

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

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

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

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

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

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

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

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.
(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5.5 million and a performance period of more than 120 days.

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

(End of clause)

I–10 FAR 52.203-14 Display of Hotline Poster(s) (Oct 2015) (As modified by DEAR 903.1004)

(a) Definition.

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

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

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

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

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

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

(3) DOE website address http://ig.energy.gov/hotline.htm

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

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

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

(2) Is performed entirely outside the United States.

(End of clause)

I–11 FAR 52.203-16 Preventing Personal Conflicts of Interest (Dec 2011)

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

“Acquisition function closely associated with inherently governmental functions” means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

“Covered employee” means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

(1) An employee of the contractor; or
(2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

“Non-public information” means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public and the Government has not yet determined whether the information can or will be made available to the public.

“Personal conflict of interest” means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially and in the best interest of the Government when performing under the contract. (A de minimis interest that would not “impair the employee’s ability to act impartially and in the best interest of the Government” is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or of other members of the covered employee’s household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from—

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;
(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

(b) Requirements. The Contractor shall—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest, by—

   (i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

      (A) Financial interests of the covered employee, of close family members, or of other members of the covered employee’s household

      (B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).

      (C) Gifts, including travel; and

   (ii) Requiring each covered employee to update the disclosure statement whenever the employee’s personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee--

   (i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

   (ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and
(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Contracting Officer any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include—

(i) Failure by a covered employee to disclose a personal conflict of interest;

(ii) Use by a covered employee of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

(c) Mitigation or waiver.

(1) In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Contractor may submit a request through the Contracting Officer to the Head of the Contracting Activity for—

(i) Agreement to a plan to mitigate the personal conflict of interest; or

(ii) A waiver of the requirement.
(2) The Contractor shall include in the request any proposed mitigation of the personal conflict of interest.

(3) The Contractor shall—

   (i) Comply, and require compliance by the covered employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or

   (ii) Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) **Subcontract flowdown.** The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts—

(1) That exceed $150,000; and

(2) In which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual).

(End of clause)

[M1067]

I–12  FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)

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

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

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

(End of clause)

[M1025]

I–13  FAR 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)

(a) Definitions. As used in this clause—

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

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

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

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

(End of Clause)

[M1067]

I–14 FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)


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

(1) When no longer needed for contract performance.

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

(3) Upon contract completion or termination.

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

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

(End of Clause)

[M779]

I–15 FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015)

(a) Definitions. As used in this clause:

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

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

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

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

(1) Salary and bonus.

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

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

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

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

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

requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

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

(d)

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

(i) In the Contractor’s preceding fiscal year, the Contractor received—

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

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

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

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

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

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

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

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

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

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

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

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

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

(3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of $30,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor’s preceding completed fiscal year at https://www.fsrs.gov, if—

(i) In the subcontractor’s preceding fiscal year, the subcontractor received—

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

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

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

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than $30,000 to avoid the reporting requirements in paragraph (d) of this clause.
(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g)

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

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

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

(End of clause)

[M1067]

I–16 FAR 52.204-13 System for Award Management Maintenance (Jul 2013)

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

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

“Data Universal Numbering System+4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart 32.11) for the same concern.

“Registered in the System for Award Management (SAM) database” means that—

1. The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;

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

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

(4) The Government has marked the record “Active”.

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

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

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

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

(b) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

c) (1)

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

(A) Change the name in the SAM database;

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

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

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

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted—

    (i) Via the internet at http://fedgov.dnb.com/webform or if the Contractor does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

    (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(d) Contractors may obtain additional information on registration and annual confirmation requirements at https://www.acquisition.gov.

(End of Clause)

[M1067]
"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 to the Bureau of Land Management, with a copy to the Contracting Officer, within 45 days of the close of each fiscal quarter --

(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.

(End of Clause)

[M1246]

I–18 FAR 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

(a) Definition. “Commercially available off-the-shelf (COTS) item,” as used in this clause--

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of $35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor’s knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government’s interests when dealing with such subcontractor in view of the specific basis for the party’s debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

(1) Exceed $35,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

(End of Clause)  
[M1067]
I–19  FAR 52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013)

(a) The Contractor shall update the information in the Federal Award Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management database via https://www.acquisition.gov.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consist of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for-

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor’s record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.
(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

[M1067]

I–20    FAR 52.209-10 – Prohibition on Contracting With Inverted Domestic Corporations (Nov 2015)

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

“Inverted domestic corporation” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

(End of clause)

[M1067]

I–21    FAR 52.210-1 Market Research (Apr 2011)

(a) Definition. As used in this clause--
“Commercial item and non-developmental item” have the meaning contained in Federal acquisition Regulation 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to--

(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency’s needs are not available, non-developmental items are available that—

   (i) Meet the agency’s requirements;

   (ii) Could be modified to meet the agency’s requirements; or

   (iii) Could meet the agency’s requirements if those requirements were modified to a reasonable extent; and

(2) Determine the extent to which commercial items or non-developmental items could be incorporated at the component level.

(End of clause)

[M1067]

I–22 FAR 52.211-5 Material Requirements (Aug 2000)

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

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

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

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means--
(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

(End of Clause)

I–23 FAR 52.215-8 Order of Precedence -- Uniform Contract Format (Oct 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

(End of Clause)

I–24 FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (Oct 2010)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or
by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any
information reasonably required to explain the subcontractor’s estimating process such as the
judgmental factors applied and the mathematical or other methods used in the estimate, including
those used in projecting from known data, and the nature and amount of any contingencies
included in the price), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in
FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a)
of this clause were accurate, complete, and current as of the date of agreement on the negotiated
price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data
at FAR 15.403-4, when entered into, the Contractor shall insert either --

   (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this
clause requires submission of certified cost or pricing data for the subcontract; or

   (2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or
Pricing Data -- Modifications.

(End of Clause)

I–25 FAR 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications
(Oct 2010)

(a) The requirements of paragraphs (b) and (c) of this clause shall --

   (1) Become operative only for any modification to this contract involving a pricing
adjustment expected to exceed the threshold for submission of certified cost or pricing
data at FAR 15.403-4; and

   (2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified
cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award,
whichever is later; or before pricing any subcontract modification involving a pricing adjustment
expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4,
the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or
by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any
information reasonably required to explain the subcontractor’s estimating process such as the
judgmental factors applied and the mathematical or other methods used in the estimate, including
those used in projecting from known data, and the nature and amount of any contingencies
included in the price), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in
FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph
(b) of this clause were accurate, complete, and current as of the date of agreement on the
negotiated price of the subcontract or subcontract modification.
(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.  

(End of Clause)

[M1025]

I–26 FAR 52.215-4 – Integrity of Unit Prices (Oct 2010)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items’ base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

(End of Clause)

[M1067]

I-27 FAR 52.215-23 – Limitations on Pass-Through Charges (Oct 2009)

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

“Added value” means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

“Excessive pass-through charge,” with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

“No or negligible value” means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).
“Subcontract” means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor,” as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) General. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) Reporting. Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if—

1. The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

2. Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) Recovery of excessive pass-through charges. If the Contracting Officer determines that excessive pass-through charges exist;

1. For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

2. For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) Access to records.

1. The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.
(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) Flowdown. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

(End of clause)

I-28 FAR 52.219-4 - Notice of Price Evaluation for HUBZone Small Business Concerns (Oct 2014)

(a) Definition. See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

   (i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

   (ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for
evaluation purposes. The agreements in paragraphs (d) and (e) of this clause do not apply if the offeror has waived the evaluation preference.

__ Offer elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a non-manufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction.

   (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor’s employees;

   (ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor’s employees or on a combination of the prime contractor’s employees and employees of HUBZone small business concern subcontractors;

   (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) Construction by special trade contractors.

   (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor’s employees;

   (ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor’s employees or on a combination of the prime contractor’s employees and employees of HUBZone small business concern subcontractors;

   (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.
(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)

(1) When the total value of the contract exceeds $25,000, a HUBZone small business concern non-manufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than $25,000, a HUBZone small business concern non-manufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) Notice. The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

I-29 FAR 52.219-8 Utilization of Small Business Concerns (Oct 2018)

Utilization of Small Business Concerns (Oct 2018)

(a) Definitions. As used in this contract—

“HUBZone small business concern” means a small business concern, certified by the Small Business Administration, that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C.101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern”, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern-

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business
concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d)

(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if:

   (i) The subcontractor is registered in SAM; and

   (ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management or by contacting the SBA. Options for contacting the SBA include:

   (i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or http://www.sba.gov/hubzone;

   (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street,
SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

(End of clause)

[M1246]

I–30 FAR 52.219-9 Small Business Subcontracting Plan (Aug 2018)

Small Business Subcontracting Plan (Aug 2018)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended \(43 \text{ U.S.C. 1601, et seq.}\) and which is considered a minority and economically disadvantaged concern under the criteria at \(43 \text{ U.S.C. 1626(e)(1)}\). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of \(43 \text{ U.S.C. 1626(e)(2)}\).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof \((e.g., \text{division, plant, or product line})\).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at \url{http://www.esrs.gov}.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups \((\text{including corporations organized by Kenai, Juneau, Sitka, and Kodiak})\) as defined in the Alaska Native Claims Settlement Act \(43 \text{ U.S.C. 1601 et seq.}\), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with \(25 \text{ U.S.C. 1452(c)}\). This definition also includes Indian-owned economic enterprises that meet the requirements of \(25 \text{ U.S.C. 1452(e)}\).

“Individual subcontracting plan” means a subcontracting plan that covers the entire contract period \((\text{including option periods})\), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master subcontracting plan” means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.
“Reduced payment” means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

“Total contract dollars” means the final anticipated dollar value, including the dollar value of all options.

“Untimely payment” means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if–

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.
(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror’s subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC’s or the Indian tribe’s written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of–
(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing
subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with-

(i) Small business concerns (including ANC and Indian tribes);
(ii) Veteran-owned small business concerns;
(iii) Service-disabled veteran-owned small business concerns;
(iv) HUBZone small business concerns;
(v) Small disadvantaged business concerns (including ANC and Indian tribes); and
(vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $700,000 ($1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will–

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in
accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor’s official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $150,000, indicating-

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-
(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program’s requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if--

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a
small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the
Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror’s planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor’s commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government’s fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled “Utilization Of Small Business Concerns;” or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.
(1) *ISR.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR.*

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.
(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over $700,000 (over $1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of Clause)

[M1246]

I–31 FAR 52.219-16 Liquidated Damages Subcontracting Plan (Jan 1999)

(a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata
share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans; the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by that commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of Clause)

I–32 FAR 52.219-28 Post-Award Small Business Program Representation (Jul 2013)

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

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts,
and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

   (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

   (ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at http://www.sba.gov/content/table-small-business-size-standards.

d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a
representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code ______________ assigned to contract number ______________.[Contractor to sign and date and insert authorized signer's name and title].

(End of clause)

M1067

I–33 FAR 52.222-1 Notice to the Government of Labor Disputes (Feb 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of Clause)

I–34 FAR 52.222-3 Convict Labor (June 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons--

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which
there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of Clause)

I–35 FAR 52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (May 2014)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.
(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

I–36 FAR 52.222-11 Subcontracts (Labor Standards) (May 2014)

(a) Definition. “Construction, alteration or repair,” as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of the work” definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Construction Wage Rate Requirements;

(2) Contract Work Hours and Safety Standards -- Overtime Compensation (if the clause is included in this contract);
(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination – Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Construction Wage Rate Requirements and Related Regulations; and

(11) Certification of Eligibility.

(c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)

(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of Clause)

[M1025]

I–37   FAR 52.222-21 Prohibition of Segregated Facilities (Apr 2015)

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

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
“Segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

I–38 FAR 52.222-26 Equal Opportunity (Apr 2015)

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

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).

(c)

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to --

(i) Employment;

(ii) Upgrading;

(iii) Demotion;

(v) Transfer;

(v) Recruitment or recruitment advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers’ representative of the Contractor’s commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of Clause)

[M11067]

I–39 FAR 52.222-29 Notification of Visa Denial (Apr 2015)

(a) Definitions. As used in this clause--
“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) **Requirement to notify.**

(1) It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual’s race, color, religion, sex, sexual orientation, gender identity, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10).

(2) The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, sexual orientation, gender identity, or national origin of the employee or potential employee.

(END OF CLAUSE)

[M1067]

I–40   FAR 52.222-35 Equal Opportunity for Veterans (Oct 2015)

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

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR 22.1301.

(b) **Equal opportunity clause.** The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) **Subcontracts.** The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate of identify properly the parties and their undertakings.
I–41   FAR 52.222-36 Equal Opportunity for Workers with Disabilities (July 2014)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

I–42   FAR 52.222-37 Employment Reports on Veterans (Feb 2016)

(a) Definitions. As used in this clause, “active duty wartime or campaign badge veteran,’’ “Armed Forces service medal veteran,’’ “disabled veteran,’’ “protected veteran,’’ and “recently separated veteran,’’ have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.


(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.
(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of Clause)

[M1067]

I–43 FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor’s plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor’s Web site that contains the full text of the poster. The link to the Department’s Web site, as referenced in (b)(3) of this section, must read, “Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers.”

(b) This required employee notice, printed by the Department of Labor, may be—
(1) Obtained from the Division of Interpretations and Standards, Office of Labor-
Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW.,
Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the
Office of Labor-Management Standards or Office of Federal Contract Compliance
Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-management Standards Web site at
http://www.dol.gov/olms/regs/compliance/EO13496.htm ; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor’s official
poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A,

(d) The Contractor shall comply with all provisions of the employee notice and related rules,
regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs
(a) through (d) of this clause, this contract may be terminated or suspended in whole or in part,
and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart
9.4 Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which
implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f),
in every subcontract that exceeds $10,000 and will be performed wholly or partially in
the United States, unless exempted by the rules, regulations, or orders of the Secretary of
Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that
such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the
applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be
directed by the Secretary of Labor as a means of enforcing such provisions, including the
imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is
threatened with such involvement, as a result of such direction, the Contractor may request
the United States, through the Secretary of Labor, to enter into such litigation to protect
the interests of the United States.

(End of clause)

[M1025]
I–44   FAR 52.222-50 Combating Trafficking in Persons (Mar 2015)

(a) Definitions. As used in this clause—

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

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

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

(1) Any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that,
if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

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

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

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

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)
(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.
(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) Contractor requirements. The Contractor shall—

(1) Notify its employees of—

   (i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

   (ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification.

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

   (i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

   (ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result
(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

(1) Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) Full cooperation.

(1) The Contractor shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not—

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

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

(iii) Restrict the Contractor from—

   (A) Conducting an internal investigation; or

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

(h) **Compliance plan.**

(1) This paragraph (h) applies to any portion of the contract that—

   (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

   (ii) Has an estimated value that exceeds $500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—

   (i) To the size and complexity of the contract; and

   (ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) **Minimum requirements.** The compliance plan must include, at a minimum, the following:

   (i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about
Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting.

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or
(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

(End of clause)

I–45 FAR 52.222-54 Employment Eligible Verification (Oct 2015)

(a) Definitions. As used in this clause—

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

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—
(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

   (i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

   (ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

   (iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

   (i) All new employees.

      (A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

      (B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3
business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify .

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—

   (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

   (ii) Construction;

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States.

(End of Clause)

[M1067]

I–46 FAR 52.223-2 -- Affirmative Procurement of Biobased Products Under Service And Construction Contracts (Sep 2013)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

   (i) Competitively within a time frame providing for compliance with the contract performance schedule;

   (ii) Meeting contract performance requirements; or

   (iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

   (i) Spacecraft system and launch support equipment.
(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.biopreferred.gov.

(c) In the performance of this contract, the Contractor shall—

(1) Report to http://www.sam.gov, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report not later than—

   (i) October 31 of each year during contract performance; and

   (ii) At the end of contract performance.

   (End of clause)

I–47 RESERVED

I–48 FAR 52.223-5 Pollution Prevention and Right-to-Know Information (May 2011) Alternate I (May 2011)

(a) Definitions. As used in this clause—

“Toxic chemical” means a chemical or chemical category in listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

   (1) The emergency planning reporting requirements of Section 302 of EPCRA.

   (2) The emergency notice requirements of Section 304 of EPCRA

   (3) The list of Material Safety Data Sheets required by Section 311 of EPCRA

   (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA

   (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

(7) The environmental management system as described in section 3(b) of E.O. 13423 and 2(j) of E.O. 13514.

(End of Clause)

I–49  RESERVED [M1100]

I–50  FAR 52.223-9 Estimate of Percentage of Recovered Material Content for EPA Designated Items (May 2008)

(a) Definitions. As used in this clause—

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

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

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

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

(2) Submit this estimate to ___________ [Contracting Officer complete in accordance with agency procedures].

(End of clause)

I–51  FAR 52.223-10 Waste Reduction Program (May 2011)

(a) Definitions. As used in this clause—

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.
“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract.

(End of Clause)

I–52 FAR 52.223-11 -- Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June 2016)

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

“Global warming potential” means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon Dioxide’s global warming potential is defined as 1.0.

“High global warming potential hydrofluorocarbons” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

“Hydrofluorocarbons” means compounds that only contain hydrogen, fluorine, and carbon.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to hydrochlorofluorocarbons.

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

Warning

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

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

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall—
(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by—

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA’s SNAP program (available at http://www.epa.gov/snap) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at http://www.epa.gov/snap.

(End of Clause)

I–53  FAR 52.223-12 Maintenance, Service, Repair or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016)

a) Definitions. As used in this clause--

“Global warming potential” means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide’s global warming potential is defined as 1.0.

“High global warming potential hydrofluorocarbons” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

“Hydrofluorocarbons” means compounds that contain only hydrogen, fluorine, and carbon.

(b) The Contractor shall comply with the applicable requirements of sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(c) Unless otherwise specified in the contract, the Contractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this contract by—

(1) Transitioning over time to the use of another acceptable alternative in lieu of high
global warming potential hydrofluorocarbons in a particular end use for which EPA’s SNAP program has identified other acceptable alternatives that have lower global warming potential.

(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;

(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service as the equipment reaches the end of its useful life; and

(4) Using reclaimed hydrofluorocarbons, where feasible.

(d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be maintained, serviced, repaired, or disposed under this contract, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this contract by—

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number;

(iii) Equipment/appliance; and

(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after--

(i) No later than November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(e) The Contractor shall refer to EPA’s SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at http://www.epa.gov/snap/.

(End of Clause)

[M1067]

I–54  FAR 52.223-13 – Acquisition of EPEAT® - Registered Imaging Equipment (Jun 2014) Alternate I (Oct 2015)

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

“Imaging equipment” means the following products:
(1) Copier--A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).

(2) Digital duplicator--A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.

(3) Facsimile machine (fax machine)--A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.

(4) Mailing machine--A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.

(5) Multifunction device (MFD)--A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from single-sheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.

(6) Printer--A commercially available imaging product that serves as a hard-copy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.

(7) Scanner--A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Federally controlled facility, only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT® silver-registered or gold-
registered.

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

(End of clause)

I–55 FAR 52.223-14 – Acquisition of EPEAT®-Registered Televisions (Jun 2014) Alternate I (Jun 2014)

(a) Definitions. As used in this clause—

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

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

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

(End of Clause)

[M1067]


(a) Definition. As used in this clause—

“Energy-efficient product”—

(1) Means a product that—

   (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

   (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

   (2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award,
for products that are—

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for—

(1) ENERGY STAR® at http://www.energystar.gov/products; and

(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

(End of clause)
“Computer display” means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008™, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

“Desktop computer” means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor. Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

“Integrated desktop computer” means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

1. A system where the computer display and computer are physically combined into a single unit; or
2. A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

“Notebook computer” means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

“Personal computer product” means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only personal computer products that, at the time of submission of proposals and at the time of award, were EPEAT® silver-registered or gold-registered.

(c) For information about EPEAT®, see www.epa.gov/epeat.
I–58  FAR 52.223-17 – Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (May 2008)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

   (1) Competitively within a timeframe providing for compliance with the contract performance schedule;

   (2) Meeting contract performance requirements; or

   (3) At a reasonable price.

(b) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, http://www.epa.gov/cpg/ . The list of EPA-designate items is available at http://www.epa.gov/cpg/products.htm .

(End of clause)

[M1067]

I–59  FAR 52.223-18 – Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)

(a) Definitions. As used in this clause—

“Driving”—

   (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

   (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to—
(1) Adopt and enforce policies that ban text messaging while driving—

   (i) Company-owned or -rented vehicles or Government-owned vehicles; or

   (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

   (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

   (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of clause)
(i) The systems of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)

(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of Clause)
I–63   FAR 52.225-1 Buy American - Supplies (May 2014) - As Modified by DEAR 970.2570 (Nov 2010)

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

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

(1) Means any item of supply (including construction material) that is—

   (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

   (ii) Sold in substantial quantities in the commercial marketplace; and

   (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

   (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
(ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

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

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall **use** only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Certificate.”

(End of clause)

[M1067]

I–64 52.225-8 -- Duty-Free Entry (Oct 2010)

(a) **Definition.** “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the--

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.
(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if--

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the--

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation “UNITED STATES GOVERNMENT, ______ [agency], ______ Duty-free entry to be claimed pursuant to Item No(s) ______ [from Tariff Schedules] ______, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to--
(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words “UNITED STATES GOVERNMENT" and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the--

(1) Foreign supplies;
(2) Country of origin;
(3) Contract number; and
(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if--

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States.

(End of clause)

[M1067]

I–65   FAR 52.225-9 Buy American– Construction Materials (May 2014)

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

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

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
“Component” means an article, material, or supply incorporated directly into a construction material.

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

“Cost of components” means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

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

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

(b) Domestic preference.

(1) This clause implements the 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a
COTS item. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: ________ [Contracting Officer to list applicable excepted materials or indicate “none”]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

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

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Price;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

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

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

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

(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**

<table>
<thead>
<tr>
<th>Construction material description</th>
<th>Unit of measure</th>
<th>Quantity</th>
<th>Price (dollars) *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

[Include other applicable supporting information.]

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

(End of Clause)

[M1025]
I–66 FAR 52.225-13 Restriction on Certain Foreign Purchases (Jun 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn/. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR chapter V and/or on OFAC’s website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of Clause)

[M490]

I–67 FAR 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)

(a) Definitions. As used in this clause:

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C.1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).
“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the:

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and Grants Administration
1849 C Street, NW, MS-2626-MIB
Washington, DC 20240-4000

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.
(ii) The target cost of a cost-plus-incentive-fee prime contract.
(iii) The target cost and ceiling price of a fixed-price incentive prime contract.
(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of Clause)
(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of the successor states of the former Soviet Union (the Ukraine, Belarus, Kazakhstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan), or from which the Contractor or any Subcontractor under this contract is exempt under the laws of the successor states of the former Soviet Union (the Ukraine, Belarus, Kazakhstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan), shall not constitute an allowable cost under this contract.

(b) If the Contractor or Subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of Clause)

I–69 FAR 52.230-2 – Cost Accounting Standards (Oct 2015)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall --

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor’s cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor’s cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on
the date of final agreement on price as shown on the Contractor’s signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)

(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor’s established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C.6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor’s award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $750,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

[M1067]

I–70  FAR 52.230-6 Administration of Cost Accounting Standards (Jun 2010)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) Definitions. As used in this clause—

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor--

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means--
(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

“Flexibly-priced contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at FAR 16.203-1(a)(2), 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

“Required change” means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently becomes applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or
(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(4) of the clause at FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clauses at FAR 52.230-3 and 52.230-4, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3 and FAR 52.230-4)—
(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO-

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall--

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

   (i) A representative sample of affected CAS-covered contracts and subcontracts.

   (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

       (A) Fixed-price contracts and subcontracts.

       (B) Flexibly-priced contracts and subcontracts.
(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall--

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include--

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and
(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect rates have been established).

(2) For unilateral changes--

   (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

      (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

      (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

   (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

      (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

      (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

   (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact
been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes--

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.
(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to--

(i) Include only those affected CAS-covered contracts and subcontracts having--

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:
(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs are incurred (i.e., whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.
(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

1. Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

2. Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

1. Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230-3 and FAR 52.230-4; and

2. Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, 52.230-4, or 52.230-5—

1. So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

2. Include the substance of this clause in all negotiated subcontracts; and

3. Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

   (i) Subcontractor's name and subcontract number.

   (ii) Dollar amount and date of award.

   (iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

1. Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and
(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, FAR 52.230-4, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

I–71 FAR 52.232-17 Interest (May 2014)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved
beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

I–72 FAR 52.232-24 Prohibition of Assignment of Claims (May 2014)

The assignment of claims under the Assignment of Claims Act of 1940 “31 U.S.C. 3727, 41 U.S.C. 6305” is prohibited for this contract.

(End of clause)

I–73 FAR 52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulation and procedures.

(End of clause)
I–74  FAR 52.232–40 – Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of Clause)

I–75  FAR 52.233–1 Disputes (May 2014) Alternate I (Dec 1991)

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)

(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)

(i) The contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.
(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.”

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor’s specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from

(1) the date that the Contracting Officer receives the claim (certified, if required); or

(2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.
I–76    FAR 52.233-3 Protest After Award (Aug 1996) Alternate I (Jun 1985)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if --

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of Clause)

I–77 FAR 52.233-4 Applicable Law for Breach of Contract Claim (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of Clause)

I–78 FAR 52.236-8 Other Contracts (Apr 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other Contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Government employees.

(End of Clause)

I–79 FAR 52.237-3 Continuity of Services (Jan 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to --

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice,
(1) furnish phase-in, phase-out services for up to 90 days after this contract expires and

(2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of Clause)

I–80 FAR 52.237-11 Accepting and Dispensing of $1 Coin (Sep 2008)

(a) This clause applies to service contracts that involve business operations conducted in U.S. coin and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. All such business operations must be compliant with the requirements in paragraphs (b) and (c) of this clause on and after January 1, 2008.

(b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of--

   (1) Accepting $1 coins in connection with such operations; and

   (2) Dispensing $1 coins in connection with such operations, unless the vending machine does not receive currency denominations greater than $1.

(c) The Contractor shall ensure that signs and notices are displayed denoting the capability of accepting and dispensing $1 coins with business operations on all premises where coins or currency are accepted or dispensed, including on each vending machine.
I–81 FAR 52.242-1 Notice of Intent to Disallow Costs (Apr 1984)

(a) Notwithstanding any other clause of this contract --

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of Clause)

I–82 FAR 52.242-13 Bankruptcy (Jul 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of Clause)

I–83 FAR 52.244-5 Competition in Subcontracting (Dec 1996)

(a) The Contractor shall select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis.
to its protégés.  

(End of Clause)

I–84 FAR 52.244-6 Subcontracts for Commercial Items (Jun 2016)

(a) Definitions. As used in this clause—

“Commercial item and commercially available off-the-shelf item” have the meanings contained Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.


(iii) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(iv) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(v) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).


(ix) 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(x) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xi)


(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xii) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015).


(xiv) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.
I–85 FAR 52.247-1 Commercial Bill of Lading Notations (Feb 2006)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. DE-AC05-76RL01830. This may be confirmed by contacting the U.S. Department of Energy; Pacific Northwest Site Office; P.O. Box 350, K9-42; Richland, Washington, 99352.

I–86 FAR 52.247-63 -- Preference for U.S.-Flag Air Carriers (Jun 2003)

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

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is
available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

[State reasons]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of Clause)

I–87 FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are --

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)

(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both --

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington, DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies

(i) within 20 working days of the date of loading for shipments originating in the United States, or

(ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.
(B) Name of vessel.
(C) Vessel flag of registry.
(D) Date of loading.
(E) Port of loading.
(F) Port of final discharge.
(G) Description of commodity.
(H) Gross weight in pounds and cubic feet if available.
(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to --

(1) Cargoes carried in vessels or as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations:

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington, DC 20590
Phone: 202-366-2324.

[End of Clause]

I–88 FAR 52.247-67 Submission of Transportation Documents for Audit (Feb 2006)

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

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

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

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

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

[End of Clause]

I–89 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 subparagraph (c)(6) of this clause; provided, however, that the Contractor

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts
for the preparation of the Contractor’s termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors’ termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation as supplemented in subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor’s termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of Clause)

[M432]

I–90 FAR 52.249-14 Excusable Delays (Apr 1984)

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are

(1) acts of God or of the public enemy,
(2) acts of the Government in either its sovereign or contractual capacity,
(3) fires,
(4) floods,
(5) epidemics,
(6) quarantine restrictions,
(7) strikes,
(8) freight embargoes, and
(9) unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless --

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this Contract.

(End of Clause)

I–91 FAR 52.250-1 Indemnification Under Public Law 85-804- Alternate I (Apr 1984)

a) “Contractor’s principal officials,” as used in the clause, means directors, officers, managers, superintendents, or other representatives supervising or directing-

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operations at anyone plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

b) Under Public Law 85-804 (50 U.S.C. §1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against-
(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of use, loss of, or damage to property;

(2) Loss of use, loss of, or damage to Contractor property, excluding loss of profit; and

(3) Loss of use, loss of, damage to Government property, excluding loss of profit.

c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor’s insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government’s liability under this clause shall not increase as a result.

d) When the claim, loss, or damage is cause by willful misconduct or lack of good faith on the part of any of the Contractor’s principal officials, the Contractor shall not be indemnified for-

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor’s property.

e) With the Contracting Officer’s prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

f) The rights and obligations of the parties under this clause shall survive this contract’s termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

g) The Contractor shall-

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may be reasonably expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;
(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government’s directions and execute any authorizations required in connection with settlement or defense of claims or actions.

h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

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

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

(2) Not affected by this contract’s Obligation of Funds clause.

(End of clause)

I–92 FAR 52.251-1 Government Supply Sources (Apr 2012) (Deviation)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the clause at DEAR 970.5245-1, Property, apply to all property acquired under such authorization.

(End of Clause)

I–93 FAR 52.251-2 Interagency Fleet Management System Vehicles and Related Services (Jan 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this Contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

(End of Clause)

I–94 FAR 52.252-6 Authorized Deviations in Clauses (Apr 1984)

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

(End of Clause)

I–95  FAR 52.253-1 Computer Generated Forms (Jan 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the Parties will be determined based on the content of the required form.

(End of Clause)

I–96  DEAR 952.203-70 Whistleblower Protection for Contractor Employees (Dec 2000)

(a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(End of Clause)

I–97  DEAR 952.204-2 Security (Mar 2011)

(a) Responsibility. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft.Except as otherwise expressly provided in this
contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.

(c) Definition of Classified Information. The term Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.

(d) Definition of Restricted Data. The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) Definition of National Security Information. The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) Definition of Special Nuclear Material. The term “special nuclear material” means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended,
of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) **Access authorizations of personnel.**

(1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must: verify an uncleared applicant’s or uncleared employee’s educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those: (a) governing the processing and privacy of an individual’s information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act,
including with respect to pre- and post-offer of employment
disability related questioning.

(iv) In addition to a review, each candidate for a DOE access
authorization must be tested to demonstrate the absence of any
illegal drug, as defined in 10 CFR Part 707.4. All positions
requiring access authorizations are deemed *testing designated
positions* in accordance with 10 CFR Part 707. All employees
possessing access authorizations are subject to applicant, random
or for cause testing for use of illegal drugs. DOE will not process
candidates for a DOE access authorization unless their tests
confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an
offer of employment for a position that requires a DOE access
authorization, the Contractor shall not place that individual in such
a position prior to the individual’s receipt of a DOE access
authorization, unless an approval has been obtained from the head
of the cognizant local security office. If the individual is hired and
placed in the position prior to receiving an access authorization,
the uncleared employee may not be afforded access to classified
information or matter or special nuclear material (in categories
requiring access authorization) until an access authorization has
been granted.

(vi) The Contractor must furnish to the head of the cognizant local
DOE Security Office, in writing, the following information
concerning each uncleared applicant or uncleared employee who is
selected for a position requiring an access authorization:

A. The date(s) each Review was conducted;

B. Each entity that provided information concerning the
   individual;

C. A certification that the review was conducted in accordance
   with all applicable laws, regulations, and Executive Orders,
   including those governing the processing and privacy of an
   individual’s information collected during the review;

D. A certification that all information collected during the
   review was reviewed and evaluated in accordance with the
   Contractor's personnel policies; and

E. The results of the test for illegal drugs.
Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

Foreign Ownership, Control, or Influence.

1. The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

2. If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

3. If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

4. The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

Employment announcements. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4,
will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

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

(End of clause)  

[M779]

I–98 **DEAR 952.204-70 Classification/Declassification (Sep 1997)**

In the performance of work under this Contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations; and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.  

[M600]

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a
Contractor Derivative Classifier in accordance with classification regulations including DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

(End of Clause)

I–99 DEAR 952.204-75 Public Affairs (Dec 2000)

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the Contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the Contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the Contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

(End of Clause)

I–100 DEAR 952.204-77 Computer Security (Aug 2006)

(a) Definitions.

(1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) Individual means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Contractor shall not allow an individual to have access to information on a DOE computer unless—

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and
(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) Subcontracts. The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

(End of Clause)

[M1067]

I–101 DEAR 952.208-7 Tagging of Leased Vehicles (Apr 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

(End of Clause)

I–102 DEAR 952-209-72 – Organizational Conflicts of Interest (Aug 2009)
Alternate 1 (Aug 2009)

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not—

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the
completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for
default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

(f) Subcontracts.

(1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract," "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

(End of clause)

[M779]


The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

(End of Clause)

[M779]

I–104 DEAR 952.215-70 Key Personnel (Dec 2000)

(a) The personnel listed below 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:

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(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.

(1) Steven F. Ashby, Laboratory Director;
(2) Malin M. Young, Deputy Director for Science & Technology; and
(3) Michael H. Schlender, Deputy Director for Operations and Chief Operations Officer.

(End of Clause)

I–105 DEAR 952.217-70 Acquisition of Real Property (Mar 2011)

(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 for which the Department of Energy will reimburse the incurred costs 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.

(End of clause)

(a) Definition. Energy Policy Act target groups, as used in this provision means—

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Obligation. In addition to its obligations under the clause of this contract entitled Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

(End of clause)


(a) Definition.

Eligible employee means a current or former employee of a Contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility

(1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),

(2) who has also met the eligibility criteria contained in the Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and
(3) who is qualified for a particular job vacancy with the Department or one of its Contractors with respect to work under its Contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this Contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

(End of Clause)


(a) The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the Contracting Officer, the Contractor must conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the Contractor must:

1. Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

2. If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

3. Inform the Contracting Officer if an initial inquiry supports a formal investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the Contractor will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor’s adjudicating official, and the adjudicating official’s decision and notification of any corrective action taken or planned, and the subject’s written response (if any).

(c) The Department of Energy (DOE) may elect to act in lieu of the Contractor in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that—

1. The research organization is not prepared to handle the allegation in a manner
consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public heath, 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.

(End of Clause)

M1025

I–110 DEAR 952.247-70 Foreign Travel (Jun 2010)

Contractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, or its successor, Official Foreign Travel, or its successor in effect at the time of award.

(End of Clause)

M779

I–111 DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (Jun 1996)

(a) Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) Definitions. The definitions set out in the Act shall apply to this clause.

(c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against

(i) claims for public liability as described in subparagraph (d)(2) of this clause; and

(ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States,
irrespective of the number of persons indemnified in connection with this Contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which

(i) arises out of or in connection with the activities under this Contract, including transportation; and

(ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)

(1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or Governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

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

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

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the Contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this Contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this
clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under

(A) the limit of liability provisions under subsection 170e. of the Act, and

(B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to

(1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and

(2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this Contract.

(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this Contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalties. Reserved.

(j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
(k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) *Effective date.* This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after August 20, 1988.

(End of Clause)

I--112 DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (Oct 2005) (AL 2012-10)

(a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) *Definitions.* The definitions set out in the Act shall apply to this clause.

(c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.

(d)

(1) *Indemnification.* To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE’s liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)  

(1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:

    (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

        1. Negligence;

        2. Contributory negligence;

        3. Assumption of risk; or

        4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
(B) Any issue or defense as to charitable or governmental immunity; and

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

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

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that...
this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.

(j) Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) Inclusion in subcontracts. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) Effective Date. This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor’s liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

(End of Clause)

[M432]

I–113 DEAR 952.251-70 Contractor Employee Travel Discounts (Aug 2009)

(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these
services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer
I–114 DEAR 970.5203-1 Management Controls (Jun 2007)

(a) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted including consideration of outsourcing of functions by management to reasonably ensure that: the mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the Contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the work under this Contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(1) The systems of controls employed by the Contractor shall be documented and satisfactory to DOE.

(2) Such systems shall be an integral part of the Contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(3) The Contractor shall, as part of the internal audit program required elsewhere in this Contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the Contracting Officer, the Contractor shall supply to the Contracting Officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 48 CFR 970.5232-3, Accounts, Records, and Inspection.

(b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

(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.

[M490]

(End of Clause)

I–116 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.

(End of Clause) [M779]

I–117 DEAR 970.5204-1 Counterintelligence (Dec 2010)

(a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475.1, Counterintelligence Program; or its successor, Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

(End of Clause) [M779]

I–118 DEAR 970.5204-2 Laws, Regulations, and DOE Directives (Dec 2000)

(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.
(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, Subchapter B, “Records Management.” The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 “Privacy Act.”

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

   (1) Employment-related records (such as worker’s compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

   (2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

   (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

   (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

   (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

      i. Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

      ii. The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

      iii. Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and
correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, Subchapter B, “Records Management” and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) Subcontracts.

1. The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72 , or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health
impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

2. The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

(End of Clause)

I–120 DEAR 970.5208-1 Printing (Dec 2000)

(a) To the extent that duplicating or printing services may be required in the performance of this Contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this Contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

(End of Clause)

I–121 DEAR 970.5211-1 Work Authorization (May 2007)

(a) Work authorization proposal. Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the Contractor with program execution guidance in sufficient detail to enable the Contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The Contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) Cost estimates. The Contractor and the Contracting Officer shall establish a budget of
estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work authorization or direction concerning continuation of activities of the contract.

(c) Performance. The Contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) Modification. The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the Contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) Increase in estimated cost. The Contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The Contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) Expenditure of funds and incurrence of costs. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the "Obligation of Funds" or equivalent clause of the contract.

(g) Responsibility to achieve environment, safety, health, and security compliance. Notwithstanding other provisions of the contract, the Contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the Contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause.

(End of Clause)


(a) Total available fee. Total available fee, consisting of a base fee amount (which is 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."
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.

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/Site Office Manager, or designee, will be the Manager of the DOE Pacific Northwest Site Office. The Contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.

3. The evaluation of Contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the Contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the Contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any Contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the Contract.
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 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.

(End of Clause)

[M528]
(a) General.

(1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon—

(i) The Contractor's or Contractor employees’ compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The Contractor's or Contractor employees’ compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, “Security” and “Laws, Regulations, and DOE Directives,” as well as in other terms and conditions.

(4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount.

(1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second
degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor’s overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer’s satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
(i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor “has earned” reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract—
(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or

(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor “has earned” reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract’s ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor’s ISMS. The following performance failures or performance failures of similar import will be considered first degree:

   (i) Type A accident (defined in DOE Order 225.1A).

   (ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

   (i) Type B accident (defined in DOE Order 225.1A).

   (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 231.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program
(SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).
(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor’s Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor’s safeguards and security management system relating to the protection of Restricted Data and other classified information.

(e) Minimum requirements for specified level of performance.

(1) At a minimum the Contractor must perform the following—

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an
otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(f) Minimum requirements for cost performance.

(1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(End of Clause)

[M779]

I–124 DEAR 970.5217-1 Strategic Partnership Projects Program (Non-Doe Funded Work) (Apr 2015)
(a) Authority to perform Strategic Partnership Projects. Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.

(b) Contractor's implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) Conditions of participation in Strategic Partnership Projects program. The Contractor:

(1) Must not perform Strategic Partnership Projects activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any Strategic Partnership Projects activity until a Strategic Partnership Projects proposal package has been approved by the DOE Contracting Officer or designated representative;

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;

(5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Strategic Partnership Projects proposal;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Strategic Partnership Projects activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all Strategic Partnership Projects projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must
select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE Contractor's performance as defined in the DOE approved Strategic Partnership Projects proposal package; and,

(9) Must maintain a summary listing of project information for each active Strategic Partnership Projects project, consisting of:

(i) Sponsoring agency;

(ii) Total estimated costs;

(iii) Project title and description;

(iv) Project point of contact; and,

(v) Estimated start and completion dates.

(d) Negotiation and execution of Strategic Partnership Projects agreement.

(1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Strategic Partnership Projects project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Strategic Partnership Projects agreement.

(2) The Contractor must submit all Strategic Partnership Projects agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) Preparation of project proposals. When the Contractor proposes to perform Strategic Partnership Projects activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) Strategic Partnership Projects appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Strategic Partnership Projects Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) Annual Strategic Partnership Projects report. The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Strategic Partnership Projects Activities under the contract.
I–125  DEAR 970.5222-1 Collective Bargaining Agreements Management and Operating Contracts (Dec 2000)

When negotiating collective bargaining agreements applicable to the work force under this Contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the Contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the Parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site, which will affect the continuity of operation of the facility.

(End of Clause)

I–126  DEAR 970.5222-2 Overtime Management (Dec 2000)

(a) The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this Contract.

(b) The Contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

(c) The Contracting Officer may require the submission, for approval, of a formal annual overtime control plan whenever Contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the Contracting Officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

   (i) Total cost of overtime;

   (ii) Total cost of straight time;

   (iii) Overtime cost as a percentage of straight-time cost;
(iv) Total overtime hours;
(v) Total straight-time hours; and
(vi) Overtime hours as a percentage of straight-time hours.

(End of Clause)

I–127 DEAR 970.5223-1 Integration of Environment, Safety, and Health into Work Planning and Execution (Dec 2000)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this Contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and
conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the Contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will:

1. Define the scope of work;
2. Identify and analyze hazards associated with the work;
3. Develop and implement hazard controls;
4. Perform work within controls; and
5. Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this Contract entitled "Laws, Regulations, and DOE Directives." The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the Contractor to a
subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this Contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this Contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

(End of Clause)

I–128 DEAR 970.5223-4 – Workplace Substance Abuse Programs at DOE Sites (Dec 2010)

(a) Program Implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.

(2) The DOE Prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE Prime Contractor
shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

(End of Clause)

I–129 RESERVED [M1192]
I–130 RESERVED [M1192]
I–131 DEAR 970.5225-1 Compliance with Export Control Laws and Regulations (Nov 2015)

(a) The Contractor shall comply with all applicable U.S. export control laws and regulations.

(b) The Contractor's responsibility to comply with all applicable laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to—

(1) The Atomic Energy Act of 1954, as amended;

(2) The Arms Export Control Act (22 U.S.C. 2751 et seq.);


(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);

(5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);

(6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);

(7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);

(8) Export Administration Regulations (EAR) (15 CFR parts 730 through 774); and

(9) Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).
(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities.

NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (e.g., the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (e.g., commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.

(End of clause)

I–132 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 the Appendix. 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.

(End of Clause)

I–133 DEAR 970.5226-2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000)

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has
determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the Contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

(End of Clause)

I–134 DEAR 970.5226-3 Community Commitment (Dec 2000)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

(End of Clause)


(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;
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.

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.

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.

Copyright (General).

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 Battelle Memorial Institute under Contract No. DE-AC05-76RL01830 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 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)
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 courses 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 the 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 Battelle Memorial Institute under Contract No. DE-AC05-76RL01830 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 Battelle Memorial Institute, hereinafter the Contractor, under Contract DE-AC05-76RL01830 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 recover, 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. DE-AC05-76RL01830 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. DE-AC05-76RL01830. 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. DE-AC05-76RL01830 with Battelle Memorial Institute.

   (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)

   [M453]


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
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.

Assignment means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

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.

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.

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.

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)
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;

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

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.

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.

The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

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 Contractor'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.[M453]

(End of Clause)


(a) The Government authorizes and consents to all use and manufacture of any invention
described in and covered by a United States patent in the performance of this Contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the Contracting Officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c)

(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the Parties, in all subcontracts expected to exceed the simplified acquisition threshold at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the Parties, in all subcontracts at any tier for research and development activities expected to exceed the simplified acquisition threshold.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than the simplified acquisition threshold does not affect this authorization and consent.

(End of Clause)

M1246


(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the Parties, in all subcontracts at any tier expected to exceed the simplified acquisition threshold.
I–139 DEAR 970.5227-6 Patent Indemnity-Subcontracts (Dec 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any Contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I–140 DEAR 970.5227-8 Refund of Royalties (Aug 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;
(2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
(3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
(4) Percentage or dollar rate of royalty per unit;
(5) Unit price of contract item;
(6) Number of units;
(8) Total dollar amount of royalties; and
(9) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this Contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this
Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this Contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Office of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the Parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of Clause)


(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.

(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;

(C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI); and

(D) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the “Core Technology Program”. [M440]

(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.

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

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.

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 of modification of a Contractor license. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest.
(1) Execution of delivery of title or license instruments. The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and

(ii) convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this Contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) Notification of discontinuation of patent protection. The Contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) Notification of Government rights. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(5) Invention Identification Procedures. The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written
description of such procedures to the Contracting Officer so that the 
Contracting Officer may evaluate and determine their effectiveness.

(6) Invention Filing Documentation. If the Contractor files a domestic or 
foreign patent application claiming a subject invention, the Contractor 
shall promptly submit to Patent Counsel, upon request, the following 
information and documents:

(i) the filing date, serial number, title, and a copy of the patent 
application (including an English-language version if filed in a 
language other than English);

(ii) an executed and approved instrument fully confirmatory of all 
Government rights in the subject invention; and

(iii) the patent number, issue date, and a copy of any issued patent 
claiming the subject invention.

(7) Duplication and disclosure of documents. The Government may duplicate 
and disclose subject invention disclosures and all other reports and papers 
furnished or required to be furnished pursuant to this clause; provided, 
however, that any such duplication or disclosure by the Government is 
subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR Part 
40.

(g) Subcontracts.

(1) Subcontractor subject inventions. The Contractor shall not obtain rights in 
the subcontractor's subject inventions as part of the consideration for 
awarding a subcontract.

(2) Inclusion of patent rights clause-non-profit organization or small business 
firm subcontractors. Unless otherwise authorized or directed by the 
Contracting Officer, the Contractor shall include the patent rights clause at 
48 CFR 952.227-11, suitably modified to identify the Parties, in all 
subcontracts, at any tier, for experimental, developmental, demonstration 
or research work to be performed by a small business firm or domestic 
onprofit 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.

(End of Clause)

I–142 DEAR 970.5228-1 – Insurance – Litigation and Claims (July 2013)

(a) The Contractor must comply with 10 CFR part 719, Contractor Legal Management Requirements, if applicable.

(b) (1) Except as provided in paragraph (b)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

(2) The contractor may, with the approval of the Contracting Officer, maintain a self-insurance program in accordance with FAR 28.308; provided that, with respect to workers’ compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(c) The contractor agrees to submit for the Contracting Officer’s approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(d) Except as provided in paragraph (f) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance
without regard to the clause of this contract entitled “Obligation of Funds.”

(e) The Government’s liability under paragraph (d) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(f) (1) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities to third parties, including contractor employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgments and settlements –

   (i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31;

   (ii) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer; or

   (iii) Which were caused by contractor managerial personnel’s –

         a. Willful misconduct;

         b. Lack of good faith; or

         c. Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(2) The term “contractor’s managerial personnel” is defined in the Property clause in this contract.

(g) (1) All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for by the contractor separately. If the Contracting Officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (f) of this clause is not allowable.

(h) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or non-reimbursable costs incurred in connection with contract performance.
I–143 DEAR 970.5229-1 State and Local Taxes (Dec 2000)

(a) The Contractor agrees to notify the Contracting Officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the Contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the Contracting Officer or on the basis of advice from the Contracting Officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Contractor agrees to take such action as may be required or approved by the Contracting Officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Contracting Officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this Contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall hold the Contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

(End of Clause)


(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before October 1, 1998, in conjunction with the management and operation of the Pacific Northwest National Laboratory, shall be deemed incurred under Contract No. DE-AC06-76RL01830, Modification M198, dated October 14, 1992.
(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(End of Clause)

I–145 DEAR 970.5232-1 Reduction or Suspension of Advance, Partial, or Progress Payments (Dec 2000)

(a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the Contractor's request for advance, partial, or progress payment is based on fraud.

(c) The Contractor shall be afforded a reasonable opportunity to respond in writing.

(End of Clause)


(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. [M779]

(1) RESERVED [M779]

(2) RESERVED [M528]

(3) RESERVED [M779]

(b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
(c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

(d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after—

1. Compliance by the Contractor with DOE's patent clearance requirements, and

2. The furnishing by the Contractor of—

   i. An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

   ii. A closing financial statement;

   iii. The accounting for Government-owned property required by the clause entitled "Property"; and

   iv. A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract subject only to the following exceptions—

      A. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

      B. Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out
of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance—Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this Contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(i) Any claim which the Government may have against the Contractor in connection with this Contract, and

(ii) Deductions due under the terms of this Contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
(i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefore.

(j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(k) Review and approval of costs incurred. The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

(End of Clause)

I–147 DEAR 970.5232-3 – Accounts, Records, and Inspection (Dec 2010)

(a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
(c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

(d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any employee regarding such transactions.
(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

(i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—

(i) The internal audit organization's placement within the contractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the Contractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.

(2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and
the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.

(3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.

(4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

(End of Clause)

[M779]

I–148 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 specified in Section B, clause entitled “Obligated Funds”. 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 45-day period hereinafter specified, is in the Contractor's best judgment sufficient to continue Contract operations at the programmed rate for only 45 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.

(End of Clause)

I–149 DEAR 970.5232-5 Liability with Respect to Cost Accounting Standards (Dec 2000)

(a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this Contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The Contractor is not liable to the Government for increased costs or interest resulting from its Subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the Contractor includes in each covered subcontract a clause making the Subcontractor liable to the Government for increased costs or interest resulting from the Subcontractor's failure to comply with the clauses; and the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the Subcontractor.

(End of Clause)

I–150 DEAR 970.5232-6 Strategic Partnership Projects Funding Authorization (Apr 2015)

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

(End of Clause)

I–151 DEAR 970.5232-7 Financial Management System (Dec 2000)

The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this Contract, expenditures, costs,
and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The Contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for written approval before implementation.

(End of Clause)

I–152 DEAR 970.5232-8 Integrated Accounting (Dec 2000)

Integrated accounting procedures are required for use under this Contract. The Contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this Contract in accordance with requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this Contract.

(End of Clause)

I–153 DEAR 970.5235-1 – Federally Funded Research and Development Center Sponsoring Agreement (Dec 2010)

(a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy (DOE) and the Contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).

(b) In the operation of this FFRDC, the Contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.

(c) Unless otherwise provided by the contract, the Contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of the clause 48 CFR 970.5217-1, Work for Others Program.

(d) As an FFRDC, the Contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work), or its successor.

(End of Clause)

[M779]
I–154 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.

(End of Clause)

I–155 DEAR 970.5242-1 – Penalties for Unallowable Costs (Aug 2009)

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that Contractor—

(i) Was subject to a Contracting Officer's final decision and not appealed;

(ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is—

(1) Expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or
(2) Determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The Contracting Officer may waive the penalty provisions when—

(1) The Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) The Contractor demonstrates to the Contracting Officer's satisfaction that—

   (i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor's submission for settlement of costs; and

   (ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(End of Clause)

I–156 DEAR 970.5243-1 Changes (Dec 2000)

(a) Changes and adjustment of fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this Contract requiring additional work or directing the omission of, or variation in, work covered by this Contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the Parties and the Contract shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) Work to continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

(End of Clause)

(a)  **General.** The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor’s compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b)  **Acquisition of utility services.** Utility services shall be acquired in accordance with the requirements of subpart 970.41.

(c)  **Acquisition of Real Property.** Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d)  **Advance Notice of Proposed Subcontract Awards.** Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e)  **Audit of Subcontractors.**

(1)  The Contractor shall provide for—

   (i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and

   (ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2)  Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3)  Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE.
Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) Bonds and Insurance.

(1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of $100,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

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

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than $25,000, but not greater than $100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

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

(g) Buy American. The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of $500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at $500,000 or less. [M963]

(h) Construction and Architect-Engineer Subcontracts.

(1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest.
(i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) **Contractor-Affiliated Sources.** Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) **Contractor-Subcontractor Relationship.** The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) **Government Property.** The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property.

(l) **Indemnification.** Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) **Leasing of Motor Vehicles.** Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(o) **Management, Acquisition and Use of Information Resources.** Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) **Priorities, Allocations and Allotments.** Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) **Purchase of Special Items.** Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

(1) Motor vehicles—48 CFR 908.7101
(2) Aircraft—48 CFR 908.7102
(3) Security Cabinets—48 CFR 908.7106
(4) Alcohol—48 CFR 908.7107
(5) Helium—48 CFR subpart 8.5
(6) Fuels and packaged petroleum products—48 CFR 908.7109
(7) Coal—48 CFR 908.7110
(8) Arms and Ammunition—48 CFR 908.7111
(9) Heavy Water—48 CFR 908.7121(a)
(10) Precious Metals—48 CFR 908.7121(b)
(11) Lithium—48 CFR 908.7121(c)
(12) Products and services of the blind and severely handicapped—41 CFR 101-26.701
(13) Products made in Federal penal and correctional institutions—41 CFR 101-26.702

(r) **Purchase versus Lease Determinations.** Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

(1) At time of original acquisition;

(2) When lease renewals are being considered; and

(3) At other times as circumstances warrant.

(s) **Quality Assurance.** Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) **Setoff of Assigned Subcontractor Proceeds.** Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) **Strategic and Critical Materials.** The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) **Termination.** When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3
and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) **Unclassified Controlled Nuclear Information.** Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) **Subcontract Flowdown Requirements.** In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

2. Foreign Travel clause prescribed in 48 CFR 952.247-70.
5. State and local taxes clause prescribed in 48 CFR 970.2904-1.
6. Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
7. **Service Contract Reporting clause prescribed in 48 CFR 4.1705**
8. **Minimum Wages under Executive Order 13658 clause prescribed in 48 CFR 22.1906**

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

I–158  DEAR 970.5245-1 Property (Jan 2013) 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 (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

   (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property.

   (1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

      (A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

      (B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or
(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor—

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.

(i) Property Management.

(1) Property Management System.
(i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved];

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory.

(i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "contractor's managerial personnel" as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of—

(1) The Contractor's business; or

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

(3) The Contractor's Government property system and/or a Major System 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.
(End of Clause)

[k]

(k) The Contractor shall include this clause in all cost reimbursable subcontracts.

(End of Clause)

[k]
Part III – List of Documents, Exhibits, and Other Attachments

Section J

List of Attachments
Part III – List of Documents, Exhibits, and Other Attachments

Section J

List of Attachments

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Appendix A

Advance Understandings on Human Resources Cost

Applicable to the Operation of
Pacific Northwest National Laboratory

Contract No. DE-AC05-76RL01830
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Appendix A

Pacific Northwest National Laboratory

Advance Understanding on Human Resources Costs

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I. INTRODUCTION

(a) This Advance Understanding is intended to document the principles and measures for evaluation of items of allowable human resources costs and related expenses not specifically addressed elsewhere under this Contract.

(b) The Contractor shall select, manage, and direct its work force and apply its human resource policies in general conformity with its private operations and/or industrial practices insofar as they are consistent with this Contract. The Contractor shall notify the Contracting Officer of all changes to personnel policies. Any changes to the personnel policies or practices in place as of the effective date of this contract which would increase costs, are subject to approval in advance by the Contracting Officer. Any programs or policies initiated for corporate application, permanently or for a finite period, that will impact staffing levels or compensation costs (i.e., furloughs or salary cuts) will not be applicable to Laboratory employees, without prior approval of the Contracting Officer.

(c) This Appendix A may be modified from time to time by agreement of the Parties. Either Party may, at any time, request that this Appendix A be revised, and the Parties hereto agree to negotiate in good faith concerning any requested revision. Revisions to this Appendix A shall be accomplished by executing a modification to the prime contract.

(d) The Contractor may propose exceptions to the provisions of Appendix A when such exceptions are in the best interest of contract operations, beneficial to the government, or will facilitate or enhance contract performance and are approved in advance by the Contracting Officer (CO).

(e) It is understood that no provision of this Appendix can affect any right guaranteed to a bargaining unit staff member by the terms of a Collective Bargaining Agreement.

II. COMPENSATION

The Contractor is required to include the following elements in Laboratory compensation systems:

(a) Salary Increases
   Compensation will comply with the maximum compensation reimbursement level, per the Bipartisan Budget Act of 2013 (BBA), Section 702, Limitation on Allowable Government Contractor Compensation Costs.

(b) Compensation Increase Plan
   (1) The Contractor shall submit the Compensation Increase Plan (CIP) proposal no later than 60 days prior to the start of the new salary cycle.

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(2) In order to pay "on-market-on-average," in the calculation of market position, Laboratory salary data shall be matched to survey data as of the midpoint of the salary cycle. PNNL’s salary cycle is from January 1 to December 31 with a June 1 midpoint.

(3) The annual effective date of the merit increase shall be the first pay period beginning on or after January 1 or as soon thereafter as is practicable following CIP approval from DOE. If the CO approval is not received in sufficient time to allow implementation as of that date, a retroactive payment adjustment will be made as soon as practicable after the CO approval is obtained.

(c) **Variable Pay Plan**

The contractor is authorized to expend contract funds in the amount of 1.5% of the combined exempt and non-exempt salary base, as of the previous year’s December 31st data. This authorization is for the annual recruiting, retention and performance awards programs described under X. Employee Programs and XI. Recruiting Personnel.

(d) **Payment of Joint Appointees**

Joint Appointees shall be paid at the salary and fringe benefit rates established by the home institution with only the home institution being the employer for purposes of pay and benefits. The host institution will reimburse to the home institution the percentage of time worked (salary and fringe benefit rate) by the Joint Appointee at the host institution.

**III. ANCILLARY PAY COMPONENTS**

Ancillary pay will be conducted in accordance with Contractor’s policies/practices as approved by the Contracting Officer.

(a) **Medical evacuation services/insurance.** Employees required to perform official travel to foreign countries where local care is substandard (according to U.S. standards) may have coverage that pays for evacuation services to an acceptable medical facility in a proximal location on an urgent or emergency basis. The policy shall cover evacuation, expatriation of remains, and ancillary costs associated with the incident. Costs for such coverage for eligible employees are allowable.

(b) **Temporary Assignment Allowances (Domestic and Foreign).** Contracting Officer approval is required for all assignments on an annual basis.

**IV. REDUCTIONS IN CONTRACTOR EMPLOYMENT**

Workforce Reductions in Force (RIF) (voluntary and involuntary) will be conducted in accordance with Contractor’s Contracting Officer-approved policies/practices, the approved
DOE Workforce Restructuring plan for the Pacific Northwest National Lab, and Contracting Officer direction on workforce restructuring.

(a) Workforce Restructuring Actions

(1) The Contractor will notify or request approval of individual workforce restructuring actions in accordance with the following:

<table>
<thead>
<tr>
<th>RESTRUCTURING ACTION</th>
<th>#EMPLOYEES POTENTIALLY IMPACTED</th>
<th>ACTION REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntary</td>
<td>100+</td>
<td>CO Notification</td>
</tr>
<tr>
<td>Involuntary</td>
<td>100+</td>
<td>CO Approval</td>
</tr>
</tbody>
</table>

Note: “Actions” are defined as restructuring efforts that are driven by impact to functional area, business purpose, or programmatic funding.

a. Notifications will be consistent with the following parameters:

(1) In accordance with approved laboratory/contractor policies;
(2) No enhanced benefits (severance or pension);
(3) No backfilling (internally or externally) or re-employment of employees after severance is paid;
(4) A business case is submitted 5 business days in advance of notification date that include maximum number of voluntary reductions, maximum dollars, positions/skills impacted; reasons reductions are needed, copy of self-select waivers, and communication plan; and
(5) Voluntary reductions are offered to all eligible employees in an operational unit (i.e., organization, direct/indirect category, etc.).

b. Actions requiring approval will additionally require a workforce restructuring plan prepared in accordance with DOE policy.

c. Approval actions shall be submitted a minimum of 10 business days prior to announcement to employees.

d. A diversity analysis shall be submitted a minimum of 10 business days prior to notification to individual impacted employees if at the end of the action, or any significant phase of it, 100 or more employees will be involuntarily separated in a rolling 12-month period.

e. Waivers or self-select forms that vary from those provided in DOE policy documents are subject to approval by DOE.

(2) Severance. Any employee who volunteers for layoff or retirement during a time period in which the Contract has a DOE approved active reduction in force plan
will be eligible for severance pay provided the termination is accepted by Laboratory management and results in the retention of an employee who otherwise would have been laid off.

a. If DOE approval is not required, severance may be paid to an employee who volunteers for layoff or retirement, if Contractor management has approved the restructuring action and the termination results in the retention of an employee who otherwise would be laid off.

b. Severance is payable to an employee who volunteers for layoff or retirement, if the termination is associated with a restructuring action approved and initiated by Contractor management or DOE. Severance not associated with workforce restructuring is unallowable.

(3) Outplacement. The Contractor, to the extent practicable, shall provide outplacement services in the forms of skills assessment and resume preparation to those employees who are involuntarily separated due to a layoff.

(4) Displaced Worker Medical Benefit.

Contractor employees who separate from employment voluntarily or involuntarily (other than for cause) and who were eligible for medical insurance coverage under the Contractor’s plan at the time of separation from employment are eligible for medical coverage under the DOE Displaced Workers’ Medical Benefits Program, provided they are not eligible for coverage under another plan, e.g., another employer’s group health plan, the Contractor’s Retiree Medical Plan, a spouse’s medical plan, or Medicare. Allowable cost will be based on the following schedule:

(1) First Year: The Contractor's contribution for an active employee
(2) Second Year: One half of the Contractor's Cobra premium
(3) Third and subsequent years: Reasonable administrative costs that exceed the two percent administrative fee paid by the displaced worker.

Eligibility is determined in accordance with Departmental policy on workforce restructuring.

V. PAYMENTS ON TERMINATION OF EMPLOYMENT

(a) Vacation. The Contractor is authorized to pay accumulated vacation upon termination at the rate in effect as of the date of termination, including any shift differential.

(b) Sick leave. The payment of accumulated sick leave upon termination is unallowable.
(c) **Reduction in Force (RIF).** When employees are terminated due to a RIF, the following costs are allowable:

1. **Pay in lieu of notice.** Any employee who is laid off or terminated due to a RIF may be given pay in lieu of the required minimum written notice of termination. Accumulated vacation credit is also paid.

2. **Severance pay benefit.** The severance payment shall be made in an amount equal to one week’s pay for each year of continuous full-time equivalent service plus one-quarter of a week’s pay for each additional three (3) months of continuous service at the time of layoff up to a total of twenty (20) weeks’ pay. An additional five weeks of pay may be provided to staff who sign a General Release. Severance payments may be made at the Contractor’s option to a staff member within a RIF grouping who is not scheduled for termination but who offers to terminate employment, provided the termination is accepted by Laboratory management, thereby eliminating the need for terminating another staff member involuntarily.

(d) **Terminations for Cause.** Any consideration of pay in lieu of notice for immediate dismissal will be evaluated on a case-by-case basis in accordance with Contractor policies/procedures.

**VI. SETTLEMENT COSTS**

**Staff Settlement Costs.** The Contractor is authorized to resolve claims settlements and internal staff settlements up to $25,000 without the advance approval of the Contracting Officer. Worker’s Compensation claims settlements shall be in accordance with the Worker’s Compensation Clause of the Contract.

**VII. LABOR RELATIONS**

(a) **Collective Bargaining –** Consistent with Contract provisions, costs of fringe benefit and wages paid to staff under collective bargaining agreements will be reimbursed as well as all other reasonable costs and expenses (such as expenses relating to the grievance process, arbitration and arbitration awards), and other costs and expenses incurred pursuant to applicable collective bargaining agreements and revisions thereto.

(b) **Bargaining Unit Activity –** Reasonable paid absence leave will be authorized for staff for time spent acting in the capacity of union officers, union stewards, or committee members handling grievances, negotiating with the Laboratory, and /or serving on labor management (Laboratory) committees as outlined in the Contractor’s policies.
VIII. PROGRAMS INVOLVING EMPLOYEE ABSENCE FROM THE WORKPLACE

(a) Paid Leave – The Laboratory will provide a reasonable and cost effective paid leave program. Paid leave includes but is not limited to: Vacation, holiday, sick leave, jury duty, personal leave, and flextime, according to approved Laboratory schedules (where appropriate) and administered in accordance with applicable Contracting Officer-approved PNNL policies. Only leave categories included in the Benefit Value Study shall be allowable.

(b) Sabbaticals/Temporary Assignments of Laboratory Staff to Other Institutions for Teaching and Research/Technical Exchange – The Contractor shall be reimbursed for expenditures arising out of an approved staff assignment to another institution for teaching and/or research or technical exchange if the assignment does not exceed one year. Extensions can be approved by the Human Resources Director with total assignment not to exceed three years.

(c) The Contractor will notify the CO on an annual basis of joint appointments with research institutions within specific skill areas critical to national interest.

(d) Military Leave – Military leave and associated pay is authorized in accordance with Contracting Officer-approved policies, and/or State or Federal law.

(e) Security Leave – Wages or salaries paid to staff when access authorization is suspended by DOE will be allowable costs under the following conditions:

If an appropriate position which does not require access authorization is not available, the Contractor may place the staff member on leave with pay at his or her base compensation until final disposition of the case.

IX. EMPLOYEE TRAINING, EDUCATION AND DEVELOPMENT

(a) The Laboratory shall establish training, education and development programs that are consistent with DOE requirements and guidance, industry standards, and other Federal, State and local regulations. These programs shall deliver quality training that will provide the learning foundation for staff to be well-qualified and competent to manage facilities and meet mission requirements through administrative, professional and technical excellence.

(1) Training - The Laboratory may conduct or permit regular staff members to attend training programs and courses that are based on training needs assessments. These training courses should contribute to the performance of work under the contract and be provided at reasonable costs to the government. The Laboratory may permit regular staff members to attend training activities during normal
working hours while receiving full pay in order to enable them to acquire the needed skills to qualify them for other jobs within the Laboratory, maintain competence, and/or stay current in their field of study or discipline.

(2) Education

a. The Laboratory may approve and support educational courses taken by staff that serve to improve efficiency and productivity of Laboratory operations, increase and enhance needed skills, or prepare staff for increased responsibilities.

b. Tuition Reimbursement - Tuition, required textbooks and fees for staff who are employed under this Contract will be provided to the extent that courses are approved in advance by the Laboratory and the staff members continue their employment during the period of reimbursement.

(3) Development – The allowable cost for developmental programs shall include but is not limited to, apprenticeship training, supervisory training, management development, scientist/engineer development, project management development, career updating and redirection, and other programs supporting the development of staff in fields of interest to the Laboratory, in accordance with policy. Course completion certificates/awards may also be provided.

X. EMPLOYEE PROGRAMS

(a) The Contractor is authorized to provide monetary or non-monetary recognition for achievements not based on performance. Awards may include, for example:

(1) Length of Service/Retirement Recognition;

(2) Safety Awards;

(3) Suggestion Program.

(b) The Contractor may recognize staff members or groups of staff who have distinguished themselves by their significant contributions and outstanding performance in the course of their work. Awards may be provided to staff or groups of staff in the form of cash. Additionally, distinguishing contributions and outstanding performance as well as noteworthy achievements and specialefforts that contribute to the reputation and stature of the Laboratory may be recognized by the presentation of plaques, certificates, and memorabilia. The presentation of such recognition may be done at events designed to honor recipients as well as to encourage all staff to strive for similar achievement. Examples of contributions and performance that warrant recognition include:
Academy of Science nomination

(2) Presidential Early Career Award (PECASE)

(3) Recipient of high-level DOE award (e.g., DOE Distinguished Associate)

(4) Recipient of prestigious, coveted and competitive award from a respected agency external to the Laboratory (e.g., Nobel Prize, National Medal of Science, E.O. Lawrence Award, Discover Award, Enrico Fermi Award)

(5) Recipient of an external award given to recognize exemplary community service and/or citizenship.

(c) Lab level events, as described in paragraphs (b), to distribute these awards are limited to $150,000 per year, unless otherwise approved by the CO and shall be limited to no more than three (3) per year.

(d) The Contractor may develop, administer and support a variety of staff programs. These programs may include athletic, cultural, and family activities. Participant fees may be collected to partially offset the cost of some or all of these activities. Appropriate facilities, utilities, and maintenance may be provided by the Laboratory.

(e) The Contractor is authorized costs to provide a comprehensive Wellness Program to promote staff health and fitness as outlined in approved policies.

(f) The Contractor shall maintain a program of preventive services, education, short-term counseling, coordination with and referrals to outside agencies, and follow-up upon return to work that conforms to the requirements of 10 CFR 707.6, Employee Assistance Program (EAP), Education, and Training.

(g) Domestic Extended Personnel Assignment. Contractor shall maintain a program within the following parameters for all PNNL sponsors. PNSO review and approval is only required for DOE Office of Science offsite assignments, excluding Office of Science Intergovernmental Personal Assignments (IPA).

(1) Assignments will not exceed three years, i.e. (36) months, in duration and a break between assignments should be at least 12 months.

(2) If a staff member is not maintaining a residence and/or the assignment will exceed 12 months from inception, Temporary Change of Station should be evaluated.

(3) Employee initial trip to assignment location and final travel from assignment location will be reimbursed at 100% Federal Travel Regulation (FTR) per diem rate.

(4) Reimbursement for Meals and Incidental Expenses (M&IE) for the first 30 days and last 30 days of the assignment shall be at 100% of the FTR per diem rate.
Reimbursement for lodging for the first 60 days and last 30 days of the assignment shall be paid at 100% of the FTR per diem rate. Interim M&IE and Lodging expenses will be reimbursed in accordance with Part I, Section H, H-21 “Advance Understandings on Allowable Costs”, Item 12) Extended Domestic Travel.

(5) Employee may be reimbursed up to 10 trips home from assignment location in a 12-month period.

(6) Employee may be authorized to ship personal items based on the DOE negotiated minimum weight thresholds with approved carriers. Staff member may be authorized to ship an additional 3,000 pounds of personal effects above the minimum weight thresholds, if the staff member waives his/her trips home for the duration of the assignment.

(7) Employee may be authorized to ship one Personally Operated Vehicle (POV), unless they travel to the assignment location via a POV.

(8) Employee may be authorized to Extended TDY Tax Reimbursement Allowance (ETTRA), which will be calculated in accordance with the FTR methodology (FTR 301-11.604)

(9) Employee may receive a transit subsidy for public transportation for assignments in the Washington, DC, area, consistent with what is allowed for Federal employees.

(10) M&IE cannot be claimed concurrently in two different temporary duty locations.

XI. RECRUITING PERSONNEL

(a) The Contractor shall have a recruitment program contained within the personnel management policies and practices that provides for recruitment and retention of future or existing staff of the Laboratory. This program should include strategies and benefits that retain a stable workforce and that retain the critical skills essential to carrying out the missions of the Laboratory.

(b) The Contractor may incur costs for the recruitment of personnel, as follows:

(1) Costs of advertising and agency and consultant fees.

(2) Recruiting Expenses - The Laboratory may reimburse, consistent with other provisions of this contract, employees traveling for recruiting purposes, the cost incurred for the following expenses: transportation, lodging, and meals for prospective employees and, when approved, for spouses or representatives of academic institutions, professional societies and other scientific organizations and incidental expenses incurred in recruiting.
(3) New or prospective employees who have been offered and have accepted a position, and who are required to take a pre-placement physical examination, shall be reimbursed for costs of the physical examination.

(4) Costs associated with pre-employment screening shall be allowable.

(c) Recruitment/Retention Tools.

(1) The Contractor may pay a sign-on bonus to recruit employees with critical skills.

(2) An annual retention bonus is authorized to retain employees with critical skills or whose expertise is critical to the completion of a specific project.

(3) The Contractor is authorized to provide service credit to critical skill new-hires for previous relevant experience at another DOE facility or external organization. Credited service may be used to establish eligibility for, or determine accrual of, service-based benefits (i.e., vacation accruals, vesting, or severance – unless severance has been paid for prior service), in accordance with the contractor’s policies.

XII. EMPLOYEE BENEFITS

Energy Employees’ Occupational Illness Compensation Program Act (EEOICPA). The Contractor agrees to comply with requests for information, records, and other program requirements to ensure the orderly administration and adjudication of claims under the EEOICPA.
Part III - List of Documents,
Exhibits, And Other Attachments

Section J

Appendix B

Special Financial Institution Account(s) Agreement
For Use with the Payments Cleared Financing Arrangement

J-B-i
SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT  
FOR USE WITH THE PAYMENTS CLEARED FINANCING ARRANGEMENT

Agreement entered into this, 1st day of July, 2010, between the UNITED STATES OF AMERICA, represented by the Department-of Energy (hereinafter referred to as "DOE"), and Battelle Memorial Institute, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as "Battelle"), and U.S. Bank, a financial institution corporation existing under the laws of the State of Washington located at Richland, Washington (hereinafter referred to as "U.S. Bank").

I.  RECITALS

1. On the effective date of December 30, 1964, DOE and Battelle entered into Agreement(s) No. DE-AC05-76RL01830, or a supplemental agreement thereto, providing for the transfer of Government funds on a payments-cleared basis.

2. DOE requires that amounts transferred to Battelle be deposited in a special demand deposit account(s) at a financial institution covered by the Department of the Treasury- approved Government deposit insurance organizations that are identified in TFM 6-9000. These special demand deposits must be kept separate from Battelle's general or other funds, and the parties are agreeable to so depositing said amounts with U.S. Bank.

3. The special deposit account(s) shall be designated:

    a. Battelle Memorial Institute, PNW Division - Contract
    b. Battelle Memorial Institute, PNW Division - Salary
    c. Battelle Memorial Institute, PNW Division - Controlled Disbursement Contract
    d. Battelle Memorial Institute, PNW Division - Controlled Disbursement Salary

II.  COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:
1. The government shall have a title to the credit balance in said account(s) to secure the repayment of all funds transferred to Battelle, and said title shall be superior to any lien, title, or claim of U.S. Bank or others with respect to such accounts.

2. U.S. Bank shall be bound by the provisions of said Agreement between DOE and Battelle relating to the transfer of funds into and withdrawal of funds from the above special demand deposit account(s), which are hereby incorporated into this Agreement by reference, but U.S. Bank shall not be responsible for the application of funds properly withdrawn from said Account(s).

After receipt by U.S. Bank of written directions from the DOE Contracting Officer, or from the duly authorized representative of the DOE Contracting Officer, U.S. Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by U.S. Bank from DOE upon DOE stationery and purporting to be signed by, or signed at the written direction of DOE may, insofar as the rights, duties, and liabilities of U.S. Bank are concerned, shall be considered as having been properly issued and filed with U.S. Bank by DOE.

3. DOE, Battelle, or its authorized representatives, shall have access to financial records maintained by U.S. Bank with respect to such special demand deposit account(s) at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by U.S. Bank for a period of six (6) years after the final payment under the Agreement.

4. In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account(s), the Financial Institution shall promptly notify DOE.

U.S. Department of Energy
Oak Ridge Financial Service Center
P.O. Box 2001, FM-71
Oak Ridge, Tennessee 37831-8771
Fax: (865) 574-5374

5. DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith there under by Battelle to U.S.
Bank for the benefit of the special demand deposit account(s). U.S. Bank agrees to honor upon presentation for payment all payments issued by Battelle and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive and as close to zero as administratively possible.

U.S. Bank agrees to service the account in this manner based on the requirements and specifications contained in RFP 20051031, effective January 3, 2006. U.S. Bank agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges" contained in U. S. Bank’s proposal dated March 16, 2006, will remain constant during the term of this Agreement. U.S. Bank shall calculate the monthly fees based on services rendered and invoice Battelle. Battelle shall issue a check or automated clearing house authorization transfer to U.S. Bank in payment thereof.

6. U.S. Bank shall post collateral, acceptable in accordance with 31 CFR 202 with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.

7. This Agreement, with all its provisions and covenants, shall be in effect for a term beginning on the 1st day of July 2010, and extending through June 30, 2011, with an option to extend for an additional five, one-year option periods, unless earlier terminated as provided in this Agreement.

8. DOE, Battelle, or U.S. Bank may terminate this Agreement at any time within the Agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.

9. DOE or Battelle may terminate this Agreement at any time upon 30 days' written notice to U.S. Bank if DOE or Battelle, or both parties, find that U.S. Bank has failed to substantially perform its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective

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utilization of the Government's cash resources.

10. Notwithstanding the provisions of Covenants 8 and 9, in the event that the Contract referenced in Recital l between DOE and Battelle is not renewed or is terminated, this Agreement between DOE, Battelle, and U.S. Bank shall be terminated automatically upon the delivery of written notice to U.S. Bank.

11. In the event of termination, U.S. Bank agrees to retain Battelle's special demand deposit account(s) for an additional 90-day period to clear outstanding payment items.

This Agreement shall continue in effect for the 90-day additional period, with the exception of the following:

1. Term Agreement (Covenant 7)
2. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid proposal submitted by U.S. Bank that are not inconsistent with this 90-day additional term shall remain in effect for this period. U.S. Bank has submitted the forms entitled "Technical Representations and Certifications," and "Schedule of Financial Institution Processing Charges." These forms have been accepted by Battelle and the DOE and are incorporated herein with the document entitled “Attachment 1- Financial Institution’s Information on Payments Cleared Financing Arrangement” as an integral part of this Agreement.

III. U.S. Bank TREASURY MANAGEMENT TERMS AND CONDITIONS SUPPLEMENT ELECTRONIC DEPOSIT SERVICES, the following processes are included:

- Begin using the collected balance to calculate daily draws;
- Discontinue the practice of overdrawing the bank account to offset positive balances in an attempt to maintain a lower average daily balance; and
- Discontinue the practice of rounding daily draws to the nearest thousand and begin calculating the exact amount needed to cover disbursements.
IV. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

FOR U.S DEPARTMENT OF ENERGY

Signature: [Signature]
Name: Ryan M. Kilbury
Title: Contracting Officer
Date: 6-21-10

FOR THE CONTRACTOR BATTELLE MEMORIAL INSTITUTE

Signature: [Signature]
Name: Judith L. Mobley
Title: Assistant Treasurer
Date: 5-20-10

FOR U.S. BANK N.A.

Signature: [Signature]
Name: Gail Heinselman
Title: Vice President, Government Services
Date: 5-27-2010
NOTE

The contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, Gwen Von Holten, certify that Jam the Treasurer of the corporation named herein; that Judith L. Mobley, who signed this Agreement on behalf of Battelle, was then Assistant Treasurer of said corporation; and that said Agreement was duly signed for and In behalf of said corporation by authority pf its governing body and Is within the scope of its corporate powers.

( Corporate Seal ) ( Signature )
Attachment 1

Financial Institution's Information on Payments Cleared Financing Arrangement
## Schedule of Financial Institution Processing Charges

<table>
<thead>
<tr>
<th>Service</th>
<th>Contractor's Projected Monthly Quantity</th>
<th>Per Item Cost</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Maintenance</td>
<td>14 Accounts</td>
<td>@ 8.00</td>
<td>$112.00</td>
</tr>
<tr>
<td>Controlled Disbursement Account Maintenance</td>
<td>6 Accounts</td>
<td>@ 75.00</td>
<td>$450.00</td>
</tr>
<tr>
<td>Controlled Disbursement Per Item Charge</td>
<td>4000</td>
<td>@ 0.09</td>
<td>$360.00</td>
</tr>
<tr>
<td>Deposited Checks-On Us</td>
<td>150</td>
<td>@ 0.05</td>
<td>$7.50</td>
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<tr>
<td>Deposited Checks-Local</td>
<td>300</td>
<td>@ 0.055</td>
<td>$16.50</td>
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<tr>
<td>Deposited Checks-Regional</td>
<td>425</td>
<td>@ 0.055</td>
<td>$23.37</td>
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<td>Deposited Check-Returned</td>
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<tr>
<td>Other Services charges for Checks Deposited or Account Maintenance Deposits – Paper</td>
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<td>@ 0.20</td>
<td>$</td>
</tr>
<tr>
<td>Deposits – Electronic</td>
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<td>@ 0.20</td>
<td>$</td>
</tr>
<tr>
<td>Processing Fee for deposited foreign currency checks</td>
<td>3</td>
<td>@ 0.50</td>
<td>$1.50</td>
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<tr>
<td>Processing Fee for generating Draft in foreign currency</td>
<td>3</td>
<td>@ 15.00</td>
<td>$45.00</td>
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<tr>
<td>Cash Deposited Per $100.00</td>
<td></td>
<td>@ 0.07</td>
<td>$</td>
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<tr>
<td>Other Services charges for processing cash transactions</td>
<td></td>
<td>@</td>
<td>$</td>
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<tr>
<td>Incoming Federal (Domestic) Wire</td>
<td>80</td>
<td>@ 5.00</td>
<td>$400.00</td>
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<tr>
<td>Incoming International Wire</td>
<td>5</td>
<td>@ 10.00</td>
<td>$50.00</td>
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<tr>
<td>Outgoing Federal (Domestic) Wire Client Initiated Internet</td>
<td>230</td>
<td>@ 7.50</td>
<td>$1,725.00</td>
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<tr>
<td>Outgoing International Wire Client Initiated-Internet</td>
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<td>@ 16.00</td>
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<td>Outgoing or Incoming Federal Wire Daily Treasury Drawdown</td>
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<td>@ 7.50</td>
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<td>Service Description</td>
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<td>Price @</td>
<td>Total</td>
</tr>
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<td>---------------------------------------------------------</td>
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<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>Federal or International Wire Investigation of Client Issued Wire</td>
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<td>$25.00</td>
<td>$125.00</td>
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<td>Bank Issuance of Amendment for Client Issued International or Federal Wire</td>
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<td>$7.50</td>
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<td>Other services charges for processing Federal or International Wires</td>
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<td>$</td>
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<td>Book Transfers (bank initiated account to account transfers)</td>
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<td>Other services charges for processing bank Internal Debit or Credits</td>
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<td>$</td>
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<td>Stop Payments Client Initiated-Internet</td>
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<td>Per Change Order Charge</td>
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<td>Rolled Coin Ordered Per $ Roll</td>
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<td>ACH Originated</td>
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<td>$3800.00</td>
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<td>$4.00</td>
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<td>ACH Received Item</td>
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<td>ACH Notice of Change</td>
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<td>Internet Report Advice/Fax</td>
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<td>$100.00</td>
</tr>
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<tr>
<td>Internet Report Advice/Fax</td>
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<td>$2.50</td>
<td>$50.00</td>
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<tr>
<td>ACH Block-Mthly Maint Per Acct</td>
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<td>$6.00</td>
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</tr>
<tr>
<td>Service</td>
<td>Volume</td>
<td>Rate</td>
<td>Amount</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------</td>
<td>-------</td>
<td>---------</td>
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<tr>
<td>Other services for processing ACH</td>
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<td>$</td>
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<td>Checks Cleared</td>
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<td>@ 25.00</td>
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<td>Check Image - CD Rom Per CD</td>
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<td>@ 6.00</td>
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<td>Check Image - Per Item</td>
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<td>Copy of Check Request</td>
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<td>Account Reconciliation</td>
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<td>$</td>
</tr>
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<td>Process Maintenance - Full</td>
<td>Per account</td>
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<td></td>
</tr>
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<td>Full Positive Pay Maintenance</td>
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<td>Reverse Positive Pay Per Item</td>
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<td>$</td>
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<td>$ 22.50</td>
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<td>Photocopies</td>
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<td>@ 0.10</td>
<td>$</td>
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<tr>
<td>Exception Items</td>
<td></td>
<td>@ 0.22</td>
<td>$</td>
</tr>
<tr>
<td>Data Key Stroke</td>
<td></td>
<td>@ 0.01</td>
<td>$</td>
</tr>
<tr>
<td>Mail Out - Per Item</td>
<td></td>
<td>@ 0.05</td>
<td>$</td>
</tr>
<tr>
<td>Previous Day Composite Report</td>
<td>1 per day/acct First</td>
<td>@ 10.00</td>
<td>$ 10.00</td>
</tr>
<tr>
<td>Previous Day Composite Report</td>
<td>1 per day/acct Next</td>
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<td>$ 130.00</td>
</tr>
<tr>
<td>BAI Items</td>
<td>4000</td>
<td>@ 0.05</td>
<td>$ 200.00</td>
</tr>
<tr>
<td>Wire Transfer Detail Report</td>
<td>1 per day per acct</td>
<td>@ no charge</td>
<td>$ 0.00</td>
</tr>
</tbody>
</table>
U.S. BANK TREASURY MANAGEMENT TERMS AND CONDITIONS SUPPLEMENT

ELECTRONIC DEPOSIT SERVICES

This Supplement amends and forms a part of the U.S. Bank Treasury Management Service Agreement and the U.S. Bank Treasury Management Services Terms and Conditions. U.S. Bank's Electronic Deposit Services provides Customer with the option to make electronic deposits using the ECLD Services or the OSED services, described below. Customer agrees that the Electronic Deposit Services shall be governed by this Supplement and other relevant sections of the U.S. Bank Treasury Management Services Terms and Conditions.

1. Service Options

Customer may select one of the following processing options as part of the Electronic Deposit Services:

a. **Check Image/Substitute Check Collection.** Customer captures checks or check information received from *its* Payor Customers into Check Images and/or MICR Data and transmits Check Images and/or MICR Data to Bank for deposit and collection. Bank will seek to collect such Check Images through the check collection system by presenting or exchanging Check Images, and/or using the Check Image and/or MICR Data to create a Substitute Check, a Demand Draft or a PIL for collection.

b. **ACH Processing and Check Image/Substitute Check Collection.** Customer captures checks or check information received from *its* Payor Customers into Check Images and/or MICR data and ACH Entry information and transmits the same to Bank for processing or deposit. Customer checks that are eligible to be used as source documents to originate ARC Entries or POP Entries are processed through the ACH system. The remaining checks are sent for collection as Check Images, Substitute Checks, Demand Drafts or PILs, as described above in the Check Image/Substitute Check Collection service option.

c. **ACH Processing and Paper Check Collection.** Customer captures checks or check information received from *its* Payor Customers into Check Images and/or MICR Data and ACH Entry information and transmits the same to Bank for processing. Customer checks that are eligible to be used as source documents are processed as ARC Entries or POP Entries. Customer deposits all other original paper checks with Bank for collection.

2. Definitions

a. **"ACH Entry"** means an ARC or POP debit entry originated to debit funds from a Payor Customer's account at a financial institution in accordance with the Operating Rules of the National Automated Clearing House Association ("NACHA").

b. **"Check Image"** means an electronic image of an original paper check or an electronic image of a Substitute Check that is created by Customer, Bank or another bank or depository institution in the check collection system.
c. "Customer System" means the computer hardware and software located at Customer’s site that is used by Customer to prepare Electronic Deposits and to access the OSED Services or ECLD services. For OSED Services, the Customer System shall comprise of a scanner and other hardware and software, all of which may be supplied by Bank.

d. "ECLD System" means Bank’s Electronic Cash Letter Deposit computer systems and databases that Customer may access in order to obtain the ECLD services.

e. "ECLD services" means the Electronic Cash Letter Deposit services that allow organizations that receive check remittance payments by mail or dropbox to deposit all payments electronically at Bank, as further described in the User Manual.

f. "Electronic Deposit" means electronic information (including Check Images, MICR Data, dollar amount or ACH Entry information), obtained from capturing information from an original paper check and related remittance documentation, that is transmitted to Bank for deposit, processing and collection.

g. "Electronic Deposit Services" means the ECLD services or OSED Services as described in this Agreement.

h. "MICR Data" means information from the Magnetic link Character Recognition stylized printing on the bottom of checks comprising of routing, transit, account and check serial numbers.

i. "OSED System" means Bank’s On-Site Electronic Deposit Service computer systems and databases that Customer may access in order to obtain the OSED Services.

j. "OSED Services" means the On-Site Electronic Deposit Services that allows organizations that receive check remittance payments by mail or in a walk-up or dropbox environment to deposit all payments electronically at Bank, as further described in the User Manual.

k. "Payor Customer" means clients and/or customers of Customer that submit original paper checks or check information to Customer for payment obligations owed to Customer.

l. "Photo-In-Lieu Instrument" or "PIL" means a photocopy of an original paper check, other than a Substitute Check, created from a Check Image.

m. "Remotely-Created Demand Draft" or "Demand Draft" means a paper item, other than a Substitute Check or PIL, that (i) is drawn on a Payor Customer account, (ii) does not bear the signature of the Payor Customer, and (iii) is authorized by the Payor Customer to be issued in the amount for which the item is drawn.

n. "Substitute Check" means a paper check document that meets the definition of a "substitute check" in the Check Collection for the 21st Century Act as implemented by Regulation CC of the Federal Reserve Board.

o. "Transaction Data" means any information obtained from Payor Customer's checks, Check images, remittance slips, or information entered by Customer into the Customer
3. Customer Authorizations and Notifications

Customer shall adhere to any and all applicable clearing house, local, state, or federal laws, rules or regulations, including but not limited to, obtaining all necessary consents and authorizations from, and/or providing all necessary disclosures and notifications to, its Payor Customers concerning the creation and use of the Payor Customers' checks or any other use of Transaction Data by Customer or Bank, and the conversion of Payor Customers' checks or check information to ACH Entries, Demand Drafts and/or Check Images (including subsequent Substitute Checks or PILs created from such Check Images). Customer is responsible for ascertaining the content, method, and frequency of any required authorizations and notifications.

4. Determination of Items Eligible for Electronic Deposit

a. Only original paper checks that qualify as a source document may be converted to an ARC Entry or POP Entry under NACHA Rules. Customer is responsible for maintaining current information in the OSED System or ECLD System on those Payor Customers that have opted out of ARC Entry conversion. If Customer has selected a processing option that uses ACH Entries to collect payments from Payor Customers, Bank will apply certain automated internal edits and screens to the MICR Data and/or Check Images submitted by Customer to determine whether the original paper check is a source document that qualifies for conversion to an ACH Entry.

Customer acknowledges and agrees that Customer is the Originator of such ACH Entries under NACHA Rules regardless of whether Customer or Bank initiates the ACH Entry into the payment system. Bank shall have no liability to Customer or any other person in the event that a Payor Customer's check or check information is processed or converted by Bank to an ACH Entry, Check Image, Substitute Check, Demand Draft or PIL, and such check or check information was not eligible for any reason for processing as, or conversion to, such an item.

b. Only a draft, payable on demand, and drawn on or payable through or at an office of a bank, is eligible for deposit as a Check image. Without limiting the generality of the preceding sentence, the following items are not eligible for deposit as Check Images under the Electronic Deposit Services, and Customer must deposit these original paper checks with Bank for collection: (i) checks, including traveler's checks that are drawn on banks located outside of the United States, (ii) checks payable in a medium other than U.S. dollars, (iii) non-cash items (as defined under Section 229.2(u) of Federal Reserve's Regulation CC), (iv) promissory notes and similar obligations, such as savings bonds, and (v) any other class of checks or drafts as identified by Bank to Customer from time to time.

5. Capture of Checks and Check' Information

a. Depending on the parameters and product options selected by Customer, Customer shall be responsible for accurately capturing an image of each paper check, the MICR Data and the correct dollar amount of the check into the Customer System. In the event the condition of a paper check precludes a complete automated read, Customer shall be responsible for visually inspecting the check and repairing the MICR Data, if necessary. Customer shall be responsible for the inspection of all Check Images to
ensure the legibility of the Check Image (including without limitation the dollar amount and signature of the drawer), for the repair of any MJCR Data, and for ensuring that any and all information on a paper check is accurately captured and legible in the resulting Check Image and/or MICR Data and otherwise complies with any Check Image or MICR Data quality standards Bank may provide to Customer from time to time. Customer acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper checks and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.

b. Customer further acknowledges that Bank does not verify the accuracy, legibility or quality of the Check Image or MICR Data prior to processing an Electronic Deposit. Bank may in its sole discretion alter or amend MICR Data submitted in an Electronic Deposit in accordance with general banking and check collection practices, but Bank shall have no obligation to effect a repair or other alteration to the MICR Data.

c. Bank shall not be liable to Customer for failure to process an Electronic Deposit, or any error that results in processing or collecting an Electronic Deposit, for which customer has not provided Bank with full and correct MICR Data and dollar amount from the original paper check, for which Customer has not provided an accurate and legible image of the original paper check, or which would violate these Terms and Conditions, the User Manuals or any other agreement between Customer and Bank.

6. Upload of Electronic Deposit to Bank

a. Customer shall upload the Electronic Deposit transmission (containing one or more Electronic Deposits) to Bank prior to the daily cut-off time established by Bank from time to time. Any Electronic Deposit transmission received by Bank after its daily cut-off time shall be deemed to have been received by Bank at the opening of its next banking day. Performance of the Electronic Deposit Services may be affected by external factors such as communication networks latency. Customer is responsible for the transmission of the Electronic Deposit until the OSED System or the ECLD System reports a successful acknowledgement of receipt of the transmission.

b. An Electronic Deposit is received when the entire Electronic Deposit transmission in which that Electronic Deposit is contained is received by Bank in accordance with Section 6a. If only a portion of that Electronic Deposit transmission is received by Bank for any reason, including without limitation a failure during the transmission to Bank, the Electronic Deposit transmission is deemed to have been not received by Bank with respect to any Electronic Deposit contained in that Electronic Deposit transmission (including any Check Image contained in the portion of that Electronic Deposit transmission that was received).

c. Bank will process Electronic Deposit transmission received from Customer either via ACH Processing, or via Check Image/Substitute Check Collection, according to the parameters and product options selected by Customer.
7. Collection of Check Images and MICR Data

Bank may in its sole discretion determine the manner in which Bank will seek to collect a Check Image and/or MICR Data deposited by Customer. Without limiting the generality of the preceding sentence, Bank may, at its option: (i) present or transfer the Check Image or MICR Data to the paying bank, a Federal Reserve Bank, image exchange network, or other collecting bank; (ii) create a Substitute Check, a Demand Draft or a PIL from the Check Image and/or MICR Data and collect such item, or (iii) request that Customer provide to Bank the original paper check from which the Check Image and/or MICR Data was created and then collect the original paper check.

8. Returns

a. Customer agrees that Bank may charge the account of Customer for any and all returned items and ACH Entries, including a returned Check Image, a returned Substitute Check or a returned Demand Draft or PIL that relates to the original paper check.

b. Bank will provide Customer with a report of Check Images, paper items and ACH Entries that are returned. If Bank receives a Check Image as a return, Bank may provide Customer with: (i) a report of returned Check Images, (ii) an image file of returned Check Images, or (iii) Substitute Checks or other copies created from the returned Check Images. Bank is not obligated to produce a Substitute Check from a returned Check Image.

c. If Customer elects to have its returned paper items directed to another financial institution or entity apart from Bank, Bank shall not be liable for any late returned items. Customer shall indemnify and hold Bank harmless from and against, any liability, loss or damage (including attorneys' fees and other costs incurred in connection therewith) relating to or arising out of any late returned item, including those claimed or incurred under Regulation CC of the Board of Governors of the Federal Reserve System ("Regulation CC") or for any breach of warranty claim.

9. Representment of Returned Electronic Deposit

a. If Customer identifies to Bank a returned ARC Entry as being returned because the original paper check was ineligible as a source document for the ARC Entry, Bank shall use reasonable efforts to collect the check related to the ARC Entry by creating, in Bank's sole discretion, a Substitute Check, a Demand Draft or a PIL from the image of the related original paper check. Customer represents and warrants to Bank that Customer has obtained all necessary and appropriate authorizations from its Payor Customers for Bank to create, and present for payment to Payor Customer's financial institution, any such Substitute Check, Demand Draft or PIL.
b. In the event Bank in its sole discretion determines that it requires the original paper check for representment, in order to collect a returned Check Image, ACH Entry, Substitute Check, Demand Draft or PIL, Customer shall be responsible for providing to Bank the original paper check, or if the original paper check has been destroyed, for obtaining a replacement check from the Payor Customer.

c. If Customer elects to use Bank’s ACH staged return process, Customer shall be solely responsible for transactions that are reinitiated based on staged returns and shall comply with all applicable laws, rules and regulations governing such transactions, including but not limited to the NACHA Rules and Regulations.

10. Storage of Check Images

Bank shall store Check Images, MICR Data and ACH Entry information on the OSED System or ECLD System, and shall make Check Images, MICR Data or ACH Entry information available to Customer according to the User Manuals and fee schedule. If Customer terminates the Electronic Deposit Services, Customer may purchase CDs or an FTP transmission which includes the Check Images, MICR Data or ACH Entry information processed through the Electronic Deposit Services at the price outlined in the fee schedule.

11. Substitute Check Received for Deposit

Bank reserves the right to reject the deposit (as an Electronic Deposit or otherwise) of a Substitute Check that was created by another financial institution, Customer, Payor Customers or any other person.

12. No Authorization to Create Substitute Checks

Customer agrees that Customer and any of its agents may not use the Check Images created by, or stored in, the OSED System or ECLD System to print a Substitute Check for any reason.

13. Retention and Destruction of Original Paper Checks

Customer shall comply with all requirements under the NACHA rules to destroy original paper checks that are source documents for ACH Entries. For original paper checks that were imaged and were not used as source documents for ACH Entries, Customer may determine how long to hold such original paper checks prior to destruction. At Bank’s request, Customer shall provide the original paper check to Bank if the original paper check has not been destroyed by Customer and Bank needs the original paper check to process a payment or resolve a dispute arising from an Electronic Deposit.
14. Remittance Documentation

For OSED Services, Customer may use Customer System to scan and read remittance documents associated with check payment. Bank disclaims any and all responsibility and/or liability associated with this use of the Customer System.

15. Representations and Warranties

With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents or originates the Electronic Deposit or Check Image, or a Substitute Check, Demand Draft, PIL, or ACH Entry created from that Check Image or MICR Data.

16. Customer Responsibility

With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Customer's breach of a representation or warranty as set forth in Section 15, (b) as a result of any act or omission of Customer in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image, Substitute Check, Demand Draft, PIL, or ACH Entry; or (d) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This Section 16 shall survive termination of the Agreement.

17. Limited Use

Customer may use the Electronic Deposit Services, the User Manual, and the OSED System or ECLD System for business use for as long as Bank in its sole discretion provides the Electronic Deposit Services to Customer. Customer shall return to Bank any Customer System software upon termination of the OSED Services.

18. Rules Applicable to Collection of Checks

Customer acknowledges and agrees that a Check Image, Substitute Check,
Demand Draft or PIL may in the sole discretion of Bank be collected through one or more check clearinghouses, one or more Federal Reserve Banks, or an agreement with another depository institution. In such cases, the Check Image, Substitute Check, Demand Draft or PIL is subject to the rules of that clearinghouse, Federal Reserve Bank, or depository institution agreement.

19. **Accuracy and Timeliness of Electronic Deposit Services**

Bank will use reasonable efforts to provide the Electronic Deposit Services in a prompt fashion but shall not be liable for temporary failure to provide the Electronic Deposit Services in a timely manner. In such event, Customer shall be responsible for carrying out banking business through alternative channels. Bank shall not be liable for any inaccurate or incomplete information with respect to transitions which have not been completely processed or posted to Bank's deposit or payments system prior to being made available pursuant to the Electronic Deposit Services. Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank as to use of such information.

20. **User Manual**

Bank will provide Customer with a user manual ("User Manual") in paper or electronic format that will set forth the OSED Services' or ECLD services' policies and procedures with which customer agrees to comply. Bank may, without prior notification, make amendments to any User Manual. Bank owns or has obtained all proprietary rights to the User Manual and Customer agrees not to duplicate, distribute or otherwise copy the User Manual without Bank's prior written consent. The User Manual will at all times remain the property of Bank, and Bank reserves the right to request Customer to return all printed copies of the User Manual within thirty (30) days of termination of the Electronic Deposit Services.

21. **Security Procedures**

Customer shall comply with all security procedures for the Electronic Deposit Services that are established by Bank or set forth in the User Manuals. Customer is solely responsible for (i) maintaining its own internal security procedures, (ii) safeguarding the security and confidentiality of Transaction Data, Check Images and other information that is either stored on the Customer System, OSED System or ECLD System, or downloaded to Customer's other computer/data systems, and (iii) preventing errors or unauthorized access to the Customer System, or the OSED System or ECLD System.
I. RECITALS

This is a modification to Contract No. DE-AC05-76RL01830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE) BATTELLE MEMORIAL INSTITUTE, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as the Recipient); and U.S. Bank, a banking corporation under the laws of the State of Washington located at Richland, Washington (hereinafter referred to as the Bank).

There is now in full force and effect between the parties a contract (Contract DE-AC05-76RL01830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date.

II. COVENANTS

1. COVENANTS, Section 7. shall be deleted and the following substituted therefor:

"This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2012, with an option to extend an additional four, one year option periods, unless earlier terminated as provided in this Agreement."

2. It is understood and agreed that all other terms and conditions of Contract DE-AC05-76RL01830 financing agreement shall remain unchanged.

III. SIGNATURES (on file)
I. RECITALS

This is a modification to Contract No. DE--AC05·76RL01830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE) BATTELLE MEMORIAL INSTITUITE, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as the Recipient); and U.S. Bank, a banking corporation under the laws of the State of Washington located at Richland, Washington (hereinafter referred to as the Bank).

There is now in full force and effect between the parties a contract (Contract DE·AC05·76RL01830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date.

II. COVENANTS

1. COVENANTS, Section 7. shall be deleted and the following substituted therfor:

"This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2013, with an option to extend an additional one year option periods, unless earlier terminated as provided in this Agreement."

2. It is understood and agreed that all other terms and conditions of Contract 402794-A-C3 shall remain unchanged

III. SIGNATURES (on file)
I. RECITALS

This is a modification to Contract No. DE-AC05-76RL01830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE) BATTELLE MEMORIAL INSTITUTE, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as the Recipient); and U.S. Bank National Association, a national bank with an office in Richland, Washington (hereinafter referred to as the Bank).

There is now in full force and effect between the parties a contract (Contract DE-AC05-76RL01830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date.

II. COVENANTS

1. COVENANTS, Section 7. shall be deleted and the following substituted therefor:

"This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2014, with an option to extend an additional two, one year option periods, unless earlier terminated as provided in this Agreement."

2. It is understood and agreed that all other terms and conditions of Contract 402794-A-C3 shall remain unchanged.

III. SIGNATURES (on file)
This is a modification to Contract No. DE-AC05-76RLO1830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE) BATTELLE MEMORIAL INSTITUTE, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as the Recipient); and U.S. Bank National Association, a national bank with an office in Richland, Washington (hereinafter referred to as the Bank).

There is now in full force and effect between the parties a contract (Contract DE-AC05-76RL01830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date.

II. COVENANTS

1. COVENANTS, Section 7. shall be deleted and the following substituted therefor:

   "This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2015, with an option to extend an additional two, one year option periods, unless earlier terminated as provided in this Agreement."

2. It is understood and agreed that all other terms and conditions of Contract 402794-A-C3 shall remain unchanged.

III SIGNATIURES (on file)
I. RECITALS

This is a modification to Contract No. DE-AC05-76RL01830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE) BATTELLE MEMORIAL INSTITUTE, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as the Recipient); and U.S. Bank National Association, a national bank formed under the laws of the United States located at Richland, Washington (hereinafter referred to as the Bank).

There is now in full force and effect between the parties a contract (Contract DE-AC05-76RL01830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date.

II. COVENANTS

1. COVENANTS, Section 7. shall be deleted and the following substituted thereof:

   "This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2016, with an option to extend an additional two, one year option periods, unless earlier terminated as provided in this Agreement."

2. It is understood and agreed that all other terms and conditions of Contract 402794-A-C3 shall remain unchanged.

III. SIGNATURES

By: U.S. DEPARTMENT OF ENERGY
   PACIFIC NORTHWEST SITE OFFICE
   
   Melanie P. Fletcher
   Contracting Officer
   Date: May 27, 2015

By: U.S. BANK NATIONAL ASSOCIATION
   
   Gail B. Heimelman
   Vice President
   Date: May 13, 2015

By: BATTELLE MEMORIAL INSTITUTE
   
   Brian R. Smith
   Treasurer
   Date: May 15, 2015
I. RECITALS

This is a modification to Contract No. DE-AC 05-76RL01830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE) BATTELLE MEMORIAL INSTITUTE, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as the Recipient); and U.S. Bank National Association, a national bank formed under the laws of the United States located at Richland, Washington (hereinafter referred to as the Bank).

There is now in full force and effect between the parties a contract (Contract DE-AC05-76RL0 1830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date.

II. COVENANTS

1. COVENANTS, Section 7. shall be deleted and the following substituted therefor:

"This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2017, with an option to extend an additional one year option period unless earlier terminated as provided in this Agreement."

2. It is understood and agreed that all other terms and conditions of Contract 402794-A-C3 shall remain unchanged.

III. SIGNATURES (on file)
I. RECITALS

This is a modification to Contract No. DE-ACOS-76RLO 1830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"), and Battelle Memorial Institute, a corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as "Battelle") and U.S. Bank National Association, a national banking association organized under the laws of the United States of America (hereinafter referred to as "U.S. Bank NA").

There is now in full force and effect between the parties a contract (Contract DE-AC05-76RLO1830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date one year to provide time for the parties to renegotiate terms for a longer agreement and incorporate a revised "Schedule of Financial Institution Processing Charges" form attached herein.

II. COVENANTS

A. Section 2, shall be deleted and the following substituted therefore:

"U.S. Bank NA shall be bound by the provisions of said Agreement(s) between DOE and Battelle relating to the transfer of funds into the and withdrawal of funds from the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but U.S. Bank NA shall not be responsible for the application of funds withdrawn from said account. After receipt by U.S. Bank NA of written directions from the DOE Contracting Officer, U.S. Bank NA shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by U.S. Bank NA from DOE upon DOE stationery and purporting to be signed by, or signed at the written direction of DOE shall, insofar as the rights, duties, and liabilities of U.S. Bank NA are concerned, be considered as having been properly issued and filed with U.S. Bank NA by DOE."

B. Section 7. shall be deleted and the following substituted therefore:

"This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2019, to provide time for the parties to renegotiate terms for a longer agreement and incorporate a revised "Schedule of Financial Institution Processing Charges" form attached herein."
III. The parties to this contract further acknowledge and agree that the contracting party US Bank NA's legal name was incorrectly referenced as "U.S. Bank, a financial institution corporation existing under the laws of the State of Washington located at Richland, Washington" in the original contract dated July 1, 2010 and in subsequent modifications to the contract. The parties further agree U.S. Bank NA is the proper legal name of said contracting party and that any and all references to "U.S. Bank" in the original contract and subsequent modifications, including this Modification No. 8, means U.S. Bank NA.

JV. It is understood and agreed that all other terms and conditions of this contract shall remain unchanged.

V. SIGNATURES (on file)

By: U.S. DEPARTMENT OF ENERGY  By: BATTELLE MEMORIAL INSTITUTE
   PACIFIC NORTHWEST SITE OFFICE

   '13rian R. Smith
   Title: Contracting Officer  Title: Treasurer
   Date: ________________________  Date: __________

By: U.S. BANK NATIONAL ASSOCIATION
   Scott Smith
   Title: Relationship Manager
   Date: 5/3/18
### Financial Institution Processing Charges

**BATTELLE - PNNL**

**07/1/2018 - 6/30/2019**

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**SUBTOTAL - DEPOSITORY SERVICE**

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**SUBTOTAL - ACCT RECON SERVICES**

### SINGLEPOINT

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**SUBTOTAL-LOCKBOX**

**ACHSERVICE**

| 250 202 | INTL ACH RECEIVED ITEM | 0.50 |
| 250 000 | ACH MONTHLY MAINTENANCE | 25.00 |
| 250 120 | ACH ORIGINATED ADDENDA ITEM | 0.02 |
| 250 501 | ACH PROCESS RUN | 5.00 |
| 250 102 | ACH ORIG TRANSIT ITEM | 0.12 |
| 250 102 | ACH ORIGINATED ON-US ITEM | 0.10 |
| 250 202 | ACH RECEIVED ITEM | 0.15 |
| 250 220 | ACH RECEIVED ADDENDA ITEM | 0.04 |
| 251 050 | ACH BLOCK MTHLY MAINT PER ACCT | 8.00 |
| 250 302 | ACH RETURN PER ITEM | 2.50 |
| 251 070 | ACH NOTIFICATION OF CHANGE | 2.50 |
| 250 400 | ACH RETURN/NOC ELECTRONIC | 2.50 |
| 250 640 | ACH ITEM ADJUSTMENT REQUEST | 3.00 |
| 300 010 | ACH REMITTANCE MONTHLY MAINT | 35.00 |

**SUBTOTAL - ACH SERVICE**

**COIN AND CURRENCY SERVICES**

| 100 01Z | CASH DEPOSITED-PER $100 | 0.08 |
| 100 000 | BRANCH DEPOSIT PROCESSING FEE | 1.25 |

**SUBTOTAL - COIN AND CURRENCY SERVICE**
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<tr>
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<td>OED WEB CLIENT MAINTENANCE</td>
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<td>109 999</td>
<td>OED CREDIT</td>
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**SUBTOTAL - ELECTRONIC DEPOSIT SERVICE**

**INTERNATIONAL BANKING**

**SUBTOTAL - MISCELLANEOUS CHARGES**

**MISCELLANEOUS CHARGES**

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**SUBTOTAL - MISCELLANEOUS CHARGES**

**TOTAL CHARGES FOR MONTH**
I. RECITALS

This is a modification to Contract No. DE-AC05-76RL01830 financing agreement, between the contracting parties, the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as “DOE”), and Battelle Memorial Institute, a corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as “Battelle”) and U.S. Bank National Association, a national banking association organized under the laws of the United States of America (hereinafter referred to as “U.S. Bank”).

There is now in full force and effect between the parties a contract (Contract DE-AC05-76RL01830), entered into on July 1, 2010.

The parties to this contract desire to modify said contract by extending the contract completion date two years and incorporate revised “Schedule of Financial Institution Processing Charges”.

II. COVENANTS

A. Section 7, shall be deleted and the following substituted therefore:

“This Agreement, with all its provision and covenants, shall be in effect beginning on July 1, 2010 and extending through June 30, 2021. The parties mutually agree the intent is that the contract end date not be extended beyond this date, unless deemed necessary by the PNSO Contracting Officer.

Furthermore, the revised “Schedule of Financial Institution Processing Charges” form attached herein is incorporated, and shall be effective as of the date of this modification through June 30, 2021. In summary, this revision appends the table adding/modifying the following:

- ‘250 611 - SP ACH ADJUSTMENT SERVICE MAINTENANCE’ which offers a secure way to provide PII to the bank.
- ‘000 230 DEPOSIT COVERAGE’ changing it from a variable rate to a flat rate of $0.14574/$1000, and
- ‘050 002 WLBX ANNUAL RENTAL-SEATTLE’ from USPS annual pass through to Annual rate based on USPS commercial rate pass through

III. It is understood and agreed that all other terms and conditions of Contract No. DE-AC05-76RL01830 shall remain unchanged.
IV. SIGNATURES

By: U.S. DEPARTMENT OF ENERGY PACIFIC NORTHWEST SITE OFFICE

By: BATTELLE MEMORIAL INSTITUTE

Melanie P. Fletcher
Contracting Officer

Brian R. Smith
Treasurer

Date: 6/28/2019

Date: 6/4/19

By: U.S. BANK

Seth Smith
Relationship Manager

Date: 5/28/19
# Schedule of Financial Institution Processing Charges

## Banking Service Charges

### Battelle - PNNL

07/01/2018 - 06/30/2021

#### Depository Service

<table>
<thead>
<tr>
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<td>010 100</td>
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#### Singlepoint

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<td>SP PREVIOUS DAY PER ITEM DET</td>
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<td>SP PREVIOUS DAY PER ITEM SUM</td>
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# BANKING SERVICE CHARGES
## BATTELLE - PNNL
## 07/01/2018 - 06/30/2021

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**BANKING SERVICE CHARGES**

**BATTKELE - PNNL**
07/01/2019 - 06/30/2021

**LOCKBOX**

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*Annual rate based on USPS commercial rate, pass through (effective as of Modification #9)*

**ACH SERVICE**

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<td>300 010</td>
<td>ACH REMITTANCE MONTHLY MAINT</td>
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**COIN AND CURRENCY SERVICES**

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<thead>
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<td>100 01Z</td>
<td>CASH DEPOSITED-PER $100</td>
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<td>BRANCH DEPOSIT PROCESSING FEE</td>
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## ELECTRONIC DEPOSIT SERVICES

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<tr>
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<td>EDM MONTHLY MAINTENANCE - NEXT</td>
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<td>101 300</td>
<td>OED WEB CLIENT MAINTENANCE</td>
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<td>109 999</td>
<td>OED CREDIT</td>
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<td>101 311</td>
<td>OED CHECK ITEM ON US</td>
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<td>101 310</td>
<td>OED CHECK ITEM - TRANSIT</td>
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## MISCELLANEOUS CHARGES

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<tr>
<td>999 999</td>
<td>MERCHANT DISCOUNT</td>
<td>Pass-through of Merchant activity if applicable</td>
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PART III – List of Documents, Exhibits and Other Attachments

Section J

Appendix C

Subcontracting Plan for Socioeconomic Programs

Pacific Northwest National Laboratory
Subcontracting Plan
Fiscal Year 2019

Socioeconomic Programs

Battelle’s policy pledges a strong commitment to involving small and socioeconomically disadvantaged business concerns in the operation of the Pacific Northwest National Laboratory. Battelle supports the socioeconomic objectives of the U.S. Government and recognizes that diversity in subcontracting provides a vital link to the local community, strengthens the economy, and represents best business practices.

In keeping with the above policy, Battelle and the U.S. Department of Energy (DOE) have established the following Subcontracting Plan (this Plan). This Plan shall remain in effect from October 1, 2019, for the entire Contract period associated with this Contract.

I. Goals

A. Guidance from the DOE Office of Small and Disadvantaged Business Utilization (OSDBU) regarding Fiscal Year 2019 small business goals was received on March 1, 2019. Based on the DOE OSDBU guidance, Battelle estimates annual fiscal year budget of $996,000,000, an adjusted procurement volume of $294,000,000, and the eligible small business subcontracting base of $235,200,000, to establish goals for Fiscal Year 2019. The goals submitted in the “Pacific Northwest National Laboratory Subcontracting Plan Fiscal Year 2019”, dated November 30, 2018 are deleted and revised to –

1. Award 45 percent to Small Business concerns, estimated at $105,840,000.
2. Award 5 percent to Small Disadvantaged Business concerns, estimated at $11,760,000.
3. Award 5 percent to Women Owned Small Business concerns, estimated at $11,760,000.
4. Award 3 percent to HUBZone Small Business concerns, estimated at $7,056,000.
5. Award 3 percent to Service-Disabled Veteran-Owned Small Business concerns, estimated at $7,056,000.
B. Goals must be realistic to present the proper challenge to staff who are ultimately responsible for goal achievement. The percentage goals in A. above, based on past performance and future projections, will present such a challenge.

C. These goals are accumulated based on subcontracts and purchase orders placed and do not include other indirect costs. They will include all dollars awarded under Contract DE-AC05-76RL01830 with the exception of those dollars awarded to federal agencies (i.e. NASA, NOAA), other Battelle Inter-laboratory Authorizations or to other Battelle-owned entities, building leases, and to firms outside the U.S.A. Other minor exclusions apply including payment to GSA for vehicle leases, travel costs for non-PNNL staff and society memberships.

D. The principal products and services to be obtained in support of this Plan are those generally associated with an extremely diverse research and development environment. The business concerns in this Plan will generally supply a major portion of the goods and services listed in Table A.

### TABLE A

<table>
<thead>
<tr>
<th>Subcontracted Effort</th>
<th>SB</th>
<th>SDB</th>
<th>WOSB</th>
<th>HUB Zone</th>
<th>SDVO</th>
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<td>Pumps, gauges and valves</td>
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<td>Computer equipment and supplies</td>
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<tr>
<td>Tooling</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aluminum and other metals</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Laboratory supplies</td>
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<td>x</td>
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<td>Reproduction supplies</td>
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<td>Chemicals</td>
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<tr>
<td>Tools of all types</td>
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<td>Construction services and materials</td>
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<td>Custodial equipment and supplies</td>
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<td>Fuels and lubricants</td>
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<tr>
<td>Plastic products</td>
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<td>x</td>
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<td>x</td>
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<tr>
<td>Industrial hardware</td>
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<td>Translating Services</td>
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<tr>
<td>Technical support</td>
<td>x</td>
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II. Battelle Subcontracting Plan Administrator

Battelle’s Small Business Program Manager, Brianna Yi, is responsible to the PNNL Acquisitions Management & Operations Program Manager and will administer this Subcontracting Plan. Any change in the name of the Small Business Program Manager will be communicated without delay to the Contracting Officer. Responsibilities of the Small Business Program Manager include:

- Serve as Battelle’s interface with small and socioeconomically-disadvantaged businesses.
- Maintain and keep current listings of small and socioeconomically-disadvantaged businesses.
- Participate as Battelle representative in small business trade fairs, specifically directed toward offering opportunities for participants to do business with Battelle.
- Attend DOE-sponsored Small Business Program Manager Meetings and participate in the annual DOE Small Business Conference.
- Participate in trade associations, business development organizations, and conferences to locate and identify small and socioeconomically-disadvantaged business sources.
- Counsel and discuss subcontracting opportunities with potential small and socioeconomically-disadvantaged business firms and arrange appropriate assistance to these firms as required and practicable.
- Provide statistics to Battelle management on progress toward established goals and recognition of significant Contract Specialist performance in this area.
- Hold periodic training and other meetings with the appropriate acquisition staff on the Socioeconomic Programs.
- Conduct periodic meetings and otherwise communicate with Battelle organizational components covering Battelle's Socioeconomic Programs.
- Support Small Business Administration (SBA) activities as requested.

### III. Administration of Battelle’s Subcontracting Plan

Battelle staff is committed to offering a fair and equitable opportunity for small and socioeconomically disadvantaged business concerns, to compete for the goods and services required to support our ongoing research.

Battelle responds either verbally or in writing to each request received from firms that desire an opportunity to compete for purchase order/subcontract business.

A computerized listing of small and socioeconomically-disadvantaged business concerns is maintained by the Small Business Program Manager.

The Small Business Program Manager may participate in the screening of purchase requisitions and may add suggested small and socioeconomically-disadvantaged businesses as potential sources for Contracts Specialist consideration.

Staff members are encouraged to use the Small Business Dynamic Search database established and maintained by the SBA for locating small and socioeconomically-disadvantaged businesses.

Staff will post all written, competitive solicitations >$150,000 on PNNL’s website to maximize exposure to small and socioeconomically-disadvantaged businesses, unless the acquisition is for: 1. work performed, or delivery will occur, in a foreign country, or 2. work performed under a classified or “Confidential Foreign Government Information – Modified Handling Authorized (C/FGI-MOD)” projects. When appropriate, procurements may be synopsized in the Federal Business Opportunities (FedBizOpps) in an effort to locate additional qualified small and socioeconomically-disadvantaged business concerns for participation.

### IV. Flow-Down Requirements to Battelle’s Subcontractors

Each purchase order/subcontract action exceeding $250,000 placed in furtherance of Prime Contract DE-AC06-76RL01830 will include the clause: "Utilization of Small Business Concerns."
Lower-Tier Subcontracting Plans from large business concerns are each reviewed and approved by Battelle’s Small Business Program Manager. Contact is established with the Lower-Tier Subcontractors Plan Administrator to offer assistance in identifying potential small and socioeconomically-disadvantaged sources and establish semi-annual reporting requirements.

Battelle's Procurement Policies Manual contains instructions to staff to include in all solicitations for negotiated procurements exceeding $700,000 ($1,500,000 for construction) and which will offer subcontracting opportunities, the requirement to develop and adopt a Small Business Subcontracting Plan as required by Battelle’s operating contract.

V. Periodic Reporting and Cooperating with DOE and SBA

Battelle will submit such periodic reports, as may be required by DOE or the SBA, in order to determine the extent of compliance with this Subcontracting Plan.

Battelle will cooperate in any studies or surveys conducted by DOE or SBA, by furnishing requested available statistical data.

Battelle will submit the Individual Subcontracting Report (ISR) and Summary Subcontract Report (SSR) in accordance with the instructions provided by DOE and the Electronic Subcontracting Reporting System. Further, Battelle will ensure that its subcontractors agree to electronically submit their ISR and SSR.

VI. Maintaining Records

Computerized reports are used to track progress toward achievement of goals. These reports are used to prepare monthly and quarterly reports (more frequent if requested) summarizing activity and progress related to compliance with the Subcontracting Plan.

In support of this Plan, Battelle will maintain the following records:

- Source lists (e.g., Dynamic Small Business Search, VetBiz Search, etc.), guides and other data that identify small and socioeconomically-disadvantaged business concerns
- Organizations contacted to locate small and socioeconomically-disadvantaged business concerns.
- Records on each competitive, domestic solicitation resulting in an award of more than $250,000, indicating whether small and socioeconomically-disadvantaged businesses were solicited and, if not, why not, and, if applicable, the reason award was not made to a small business concern.
- Records of any outreach efforts and contacts with trade associations, business development organizations, and conferences and trade fairs to locate small and socioeconomically-disadvantaged sources.
- Records of internal guidance and encouragement provided to buyers through (1) workshops, seminars, training, etc., and (2) monitoring performance to evaluate compliance with the program’s requirements.
- On a contract-by-contract basis, records to support award data submitted by the offeror to Battelle, including the name, address, and business size of each subcontractor.
PART III – List of Documents, Exhibits and Other Attachments

Section J

Appendix D

List of Applicable DOE Directives & External Requirements
## SECTION J
### APPENDIX D
### LIST OF APPLICABLE DOE DIRECTIVES & EXTERNAL REQUIREMENTS

<table>
<thead>
<tr>
<th>DOE DIRECTIVES</th>
<th>DIRECTIVE NO.</th>
<th>DIRECTIVE TITLE</th>
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<tbody>
<tr>
<td>CRD O 130.1</td>
<td>BUDGET FORMULATION</td>
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<td>CRD O 140.1</td>
<td>INTERFACE WITH THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD</td>
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<td>CRD O 142.2A, Admin Chg. 1</td>
<td>VOLUNTARY OFFER SAFEGUARDS AGREEMENT AND ADDITIONAL PROTOCOL WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY</td>
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<tr>
<td>CRD M 142-2-1, Admin Chg. 1</td>
<td>MANUAL FOR IMPLEMENTATION OF THE VOLUNTARY OFFER SAFEGUARDS AGREEMENT AND ADDITIONAL PROTOCOL WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY</td>
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<tr>
<td>CRD O 142.3A, Chg. 1</td>
<td>UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM</td>
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<td>CRD O 144.1, Admin Chg. 1</td>
<td>DEPARTMENT OF ENERGY AMERICAN INDIAN TRIBAL GOVERNMENT INTERACTIONS AND POLICY</td>
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<td>CRD O 150.1A</td>
<td>CONTINUITY OF PROGRAMS</td>
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<td>CRD O 151.1D</td>
<td>COMPREHENSIVE EMERGENCY MANAGEMENT SYSTEM</td>
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<td>CRD O 200.1A, Chg. 1</td>
<td>INFORMATION TECHNOLOGY MANAGEMENT</td>
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<td>CRD O 205.1C</td>
<td>DEPARTMENT OF ENERGY CYBER SECURITY PROGRAM</td>
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<td>CRD O 206.1</td>
<td>DEPARTMENT OF ENERGY PRIVACY PROGRAM</td>
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<td>CRD O 206.2</td>
<td>PERSONAL IDENTITY VERIFICATION</td>
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<td>CRD O 210.2A</td>
<td>DOE CORPORATE OPERATING EXPERIENCE PROGRAM</td>
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<td>REPORTING FRAUD, WASTE, AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL</td>
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<td>COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL</td>
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<td>CRD O 231.1B, Admin Chg. 1</td>
<td>ENVIRONMENT, SAFETY AND HEALTH REPORTING</td>
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<td>CRD O 232.2A</td>
<td>OCCURRENCE REPORTING AND PROCESSING OF OPERATIONS INFORMATION</td>
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<td>RECORDS MANAGEMENT PROGRAM</td>
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<td>LABORATORY DIRECTED RESEARCH AND DEVELOPMENT</td>
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<td>CRD O 413.3B, Chg. 5 (Min. Chg.)</td>
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<td>FACILITY SAFETY</td>
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<td>RADIOACTIVE WASTE MANAGEMENT MANUAL</td>
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<td>CRD O 440.2C, Chg. 1</td>
<td>AVIATION MANAGEMENT AND SAFETY</td>
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<td>THE SAFE HANDLING OF UNBOUND ENGINEERED NANOPARTICLES</td>
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<td>IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION</td>
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<td>CRD O 471.3, Chg. 1</td>
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<tr>
<td>CRD O 474.2, Admin Chg. 4</td>
<td>NUCLEAR MATERIAL CONTROL AND ACCOUNTABILITY</td>
<td></td>
</tr>
<tr>
<td>CRD O 475.1</td>
<td>COUNTERINTELLIGENCE PROGRAM</td>
<td></td>
</tr>
<tr>
<td>CRD O 475.2B</td>
<td>IDENTIFYING CLASSIFIED INFORMATION</td>
<td></td>
</tr>
<tr>
<td>CRD O 483.1B, Chg. 1</td>
<td>DOE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS</td>
<td></td>
</tr>
<tr>
<td>CRD O 484.1, Chg. 2 (Admin Chg.)</td>
<td>REIMBURSABLE WORK FOR THE DEPARTMENT OF HOMELAND SECURITY</td>
<td></td>
</tr>
<tr>
<td>CRD O 486.1</td>
<td>DEPARTMENT OF ENERGY FOREIGN RECRUITMENT TALENT PROGRAMS</td>
<td></td>
</tr>
<tr>
<td>CRD O 522.1A</td>
<td>PRICING OF DEPARTMENTAL MATERIALS AND SERVICES</td>
<td></td>
</tr>
<tr>
<td>CRD O 534.1B</td>
<td>ACCOUNTING</td>
<td></td>
</tr>
<tr>
<td>CRD O 551.1D, Chg. 2</td>
<td>OFFICIAL FOREIGN TRAVEL</td>
<td></td>
</tr>
<tr>
<td>DOE O 5639.8A</td>
<td>SECURITY OF FOREIGN INTELLIGENCE INFORMATION AND SENSITIVE COMPARTMENTED INFORMATION FACILITIES</td>
<td></td>
</tr>
<tr>
<td>DOE/RL-94-02, Rev. 5</td>
<td>HANFORD EMERGENCY MANAGEMENT PLAN–APPLICABLE TO PNNL-MANAGED FACILITIES AND ACTIVITIES ON THE HANFORD SITE</td>
<td></td>
</tr>
<tr>
<td>DOE/RL-2001-36</td>
<td>HANFORD SITE TRANSPORTATION SAFETY DOCUMENT, REV.2</td>
<td></td>
</tr>
</tbody>
</table>

* The Contractor's responsibility to implement CRD O 458.1, Chg. 3 “Radiation Protection of the Public and the Environment” is limited to paragraphs 2.d., 2.g., and 2.k.
APPENDIX E

STANDARDS OF PERFORMANCE-BASED FEE

Fiscal Year 2020

BATTLE PERFORMANCE EVALUATION AND MEASUREMENT PLAN

FOR

MANAGEMENT AND OPERATIONS OF THE

PACIFIC NORTHWEST NATIONAL LABORATORY
INTRODUCTION

This document, the Performance Evaluation and Measurement Plan (PEMP), primarily serves as DOE’s Quality Assurance/Surveillance Plan (QASP) for the evaluation of Battelle Memorial Institute (hereafter referred to as “the Contractor”) performance regarding the management and operations of the Pacific Northwest National Laboratory (hereafter referred to as “the Laboratory”) for the evaluation period from October 1, 2020, through September 30, 2021. The performance evaluation provides a standard by which to determine whether the Contractor is managerially and operationally in control of the Laboratory and is meeting the mission requirement and performance expectations/objectives of the Department as stipulated within this contract.

This document also describes the distribution of the total available performance-based fee and the methodology for determining the amount of fee earned by the Contractor as stipulated within the clauses entitled, “Determining Total Available Performance Fee and Fee Earned,” “Conditional Payment of Fee, Profit, or Incentives,” and “Total Available Fee: Base Fee Amount and Performance Fee Amount.” In partnership with the Contractor and other key customers, the Department of Energy (DOE) Headquarters (HQ) and the Site Office have defined the measurement basis that serves as the Contractor’s performance-based evaluation and fee determination.

The Performance Goals (hereafter referred to as Goals), Performance Objectives (hereafter referred to as Objectives) and set of notable outcomes discussed herein were developed in accordance with contract expectations set forth within the contract. The notable outcomes for meeting the Objectives set forth within this plan have been developed in coordination with HQ program offices as appropriate. Except as otherwise provided for within the contract, the evaluation and fee determination will rest solely on the Contractor’s performance within the Performance Goals and Objectives set forth within this plan.

The overall performance against each Objective of this performance plan, to include the evaluation of notable outcomes, shall be evaluated jointly by the appropriate HQ office, major customer and/or the Site Office as appropriate. This cooperative review methodology will ensure that the overall evaluation of the Contractor results in a consolidated DOE position taking into account specific notable outcomes as well as all additional information available to the evaluating office. The Site Office shall work closely with each HQ program office or major customer, including Inter Entity Work Orders provided by the Office of Environmental Management or their associated contractors, to calculate its weighted evaluation and to solicit performance feedback throughout the year in evaluating the Contractor’s performance and will provide observations regarding programs and projects as well as other management and operation activities conducted by the Contractor throughout the year.

Section I provides information on how the performance rating (grade) for the Contractor, as well as how the performance-based incentives fee earned (if any) will be determined. As applicable, also provides information on the award term eligibility requirements.

Section II provides the detailed information concerning each Goal, their corresponding Objectives, and notable outcomes identified, along with the weightings assigned to each Goal and Objective and a table for calculating the final grade for each Goal.

In accordance with the Contract Clause entitled "Estimated Fee Base and Total Available Performance Fees", the annual total available performance fees for Fiscal Year (FY) 2020 shall be $12,500,000.
I. DETERMINING THE CONTRACTOR'S PERFORMANCE RATING, PERFORMANCE-BASED FEE AND AWARD TERM ELIGIBILITY (as applicable)

The FY 2020 Contractor performance grades for each Goal will be determined based on the weighted sum of the individual scores earned for each of the Objectives described within this document for Science and Technology (S&T), Contractor/Laboratory Leadership, and for Management and Operations (M&O). Each Goal is composed of two or more weighted Objectives. Additionally, a set of notable outcomes has been identified to highlight key aspects/areas of performance deserving special attention by the Contractor for the upcoming fiscal year. Each notable outcome is linked to one or more Objectives, and failure to meet expectations against any notable outcome will result in a grade less than B+ for that Objective(s) (i.e., if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 1.0, 2.0, or 3.0, the SC program office that assigned the notable outcome shall award a grade less than “B+” for the Objective(s) to which the notable outcome is linked; and if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 4.0, 5.0, 6.0, 7.0 or 8.0, SC shall award a grade less than “B+” for the Objective(s) to which the notable outcome is linked). Performance above expectations against a notable outcome will be considered in the context of the Contractor’s entire performance with respect to the relevant Objective. The following section describes SC’s methodology for determining the Contractor’s grades at the Objective level.

Performance Evaluation Methodology:
The purpose of this section is to establish a methodology to develop grades at the Objective level. Each evaluating office shall provide a proposed grade and corresponding numerical score for each Objective (see Figure 1 for SC’s scale). Each evaluation will measure the degree of effectiveness and performance of the Contractor in meeting the corresponding Objectives.

<table>
<thead>
<tr>
<th>Final Grade</th>
<th>A+</th>
<th>A</th>
<th>A-</th>
<th>B+</th>
<th>B</th>
<th>B-</th>
<th>C+</th>
<th>C</th>
<th>C-</th>
<th>D</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Score</td>
<td>4.3-4.1</td>
<td>4.0-3.8</td>
<td>3.7-3.5</td>
<td>3.4-3.1</td>
<td>3.0-2.8</td>
<td>2.7-2.5</td>
<td>2.4-2.1</td>
<td>2.0-1.8</td>
<td>1.7-1.1</td>
<td>1.0-0.8</td>
<td>0.7-0.0</td>
</tr>
</tbody>
</table>

Figure 1. FY 2020 Contractor Letter Grade Scale

For the three S&T Goals (1.0 – 3.0) the Contractor shall be evaluated against the defined levels of performance provided for each Objective under the S&T Goals. The Contractor performance under Goal 4.0 will also be evaluated using the defined levels of performance described for the three Objectives under Goal 4.0. The descriptions for these defined levels of performance are included in Section II.

It is the DOE’s expectation that the Contractor provides for and maintains management and operational (M&O) systems that efficiently and effectively support the current mission(s) of the Laboratory and assure the Laboratory’s ability to deliver against DOE’s future needs. In evaluating the Contractor’s performance DOE shall assess the degree of effectiveness and performance in meeting each of the Objectives provided under each of the Goals. For the four M&O Goals (5.0 – 8.0), DOE will rely on a combination of the information through the Contractor’s own assurance systems, the ability of the Contractor to demonstrate the validity of this information, and DOE’s own independent assessment of the Contractor’s performance across the spectrum of its responsibilities. The latter might include, but is not limited to operational awareness (daily oversight) activities; formal assessments conducted; “For Cause” reviews (if any); and other outside agency reviews (OIG, GAO, DCAA, etc.).

The mission of the Laboratory is to deliver the science and technology needed to support Departmental missions and other sponsor’s needs. Operational performance at the Laboratory meets DOE’s expectations (defined as the grade of B+) for each Objective if the Contractor is performing at a level that
fully supports the Laboratory’s current and future science and technology mission(s). Performance that
has, or has the potential to, 1) adversely impact the delivery of the current and/or future DOE/Laboratory
mission(s), 2) adversely impact the DOE and or the Laboratory’s reputation, or 3) does not provide the
competent people, necessary facilities and robust systems necessary to ensure sustainable performance,
shall be graded below expectations as defined in Figure I-1, below.

The Department sets our expectations high, and expects performance at that level to optimize the efficient
and effective operation of the Laboratory. Thus, the Department does not expect routine Contractor
performance above expectations against the M&O Goals (5.0 – 8.0). Performance that might merit grades
above B+ would need to reflect a Contractor’s significant contributions to the management and operations
at the system of Laboratories, or recognition by external, independent entities as exemplary performance.

Definitions for the grading scale for the Goal 5.0 – 8.0 Objectives are provided in Figure I-1, below:

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Numerical Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>4.3-4.1</td>
<td>Significantly exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance is notable for its significant contributions to the management and operations across the SC system of laboratories, and/or has been recognized by external, independent entities as exemplary.</td>
</tr>
<tr>
<td>A</td>
<td>4.0-3.8</td>
<td>Notably exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance is notable for its contributions to the management and operations across the SC system of laboratories, and/or has been recognized by external, independent entities as exemplary.</td>
</tr>
<tr>
<td>A-</td>
<td>3.7-3.5</td>
<td>Exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s).</td>
</tr>
<tr>
<td>B+</td>
<td>3.4-3.1</td>
<td>Meets expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). No performance has, or has the potential to, adversely impact 1) the delivery of the current and/or future DOE/Laboratory mission(s), 2) the DOE and/or the Laboratory’s reputation, or does not 3) provide a sustainable performance platform.</td>
</tr>
<tr>
<td>B</td>
<td>3.0-2.8</td>
<td>Just misses meeting expectations of performance against a few aspects of the Objective in question. In a few minor instances, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission, or provide a sustainable performance platform.</td>
</tr>
<tr>
<td>B-</td>
<td>2.7-2.5</td>
<td>Misses meeting expectations of performance against several aspects of the Objective in question. In several areas, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission, or provide a sustainable performance platform.</td>
</tr>
<tr>
<td>C+</td>
<td>2.4-2.1</td>
<td>Misses meeting expectations of performance against many aspects of the Objective in question. In several notable areas, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission or provide a sustainable performance platform, and/or have affected the reputation of the Laboratory or DOE.</td>
</tr>
<tr>
<td>Letter Grade</td>
<td>Numerical Grade</td>
<td>Definition</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>C</td>
<td>2.0-1.8</td>
<td>Significantly misses meeting expectations of performance against many aspects of the Objective in question. In many notable areas, the Contractor’s systems do not support the Laboratory’s current and future science and technology mission, nor provide a sustainable performance platform and may affect the reputation of the Laboratory or DOE.</td>
</tr>
<tr>
<td>C-</td>
<td>1.7-1.1</td>
<td>Significantly misses meeting expectations of performance against most aspects of the Objective in question. In many notable areas, the Contractor’s systems demonstrably hinder the Laboratory’s ability to deliver on current and future science and technology mission, and have harmed the reputation of the Laboratory or DOE.</td>
</tr>
<tr>
<td>D</td>
<td>1.0-0.8</td>
<td>Most or all expectations of performance against the Objective in question are missed. Performance failures in this area have affected all parts of the Laboratory; DOE leadership engagement is required to deal with the situation and help the Contractor.</td>
</tr>
<tr>
<td>F</td>
<td>0.7-0.0</td>
<td>All expectations of performance against the Objective in question are missed. Performance failures in this area are not recoverable by the Contractor or DOE.</td>
</tr>
</tbody>
</table>

**Figure I-1. Letter Grade and Numerical Grade Definitions**

Calculating Individual Goal Scores and Letter Grades:

Each Objective is assigned the earned numerical score by the evaluating office as stated above. The Goal rating is then computed by multiplying the numerical score by the weight of each Objective within a Goal. These values are then added together to develop an overall numerical score for each Goal. For the purpose of determining the final Goal grade, the raw numerical score for each Goal will be rounded to the nearest tenth of a point using the standard rounding convention discussed below and then compared to Figure I-1. A set of tables is provided at the end of each Performance Goal section of this document to assist in the calculation of Objective numerical scores to the Goal grade. No overall rollup grade shall be provided.

As stated above the raw numerical score from each calculation shall be carried through to the next stage of the calculation process. The raw numerical score for weighted final S&T and weighted final M&O will be rounded to the nearest tenth of a point for purposes of determining fee. A standard rounding convention of x.44 and less rounds down to the nearest tenth (here, x.4), while x.45 and greater rounds up to the nearest tenth (here, x.5).

The eight Performance Goal grades shall be used to create a report card for the laboratory (see Figure 2, below).

<table>
<thead>
<tr>
<th>Performance Goal</th>
<th>Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Mission Accomplishment</td>
<td></td>
</tr>
<tr>
<td>2.0 Design, Fabrication, Construction and Operations of Research Facilities</td>
<td></td>
</tr>
<tr>
<td>3.0 Science and Technology Program Management</td>
<td></td>
</tr>
<tr>
<td>4.0 Sound and Competent Leadership and Stewardship of the Laboratory</td>
<td></td>
</tr>
<tr>
<td>5.0 Integrated Safety, Health, and Environmental Protection</td>
<td></td>
</tr>
<tr>
<td>6.0 Business Systems</td>
<td></td>
</tr>
<tr>
<td>7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio</td>
<td></td>
</tr>
<tr>
<td>8.0 Integrated Safeguards and Security Management and Emergency Management Systems</td>
<td></td>
</tr>
</tbody>
</table>

**Figure 2. Laboratory Report Card**
Determining the Amount of Performance-Based Fee Earned:
SC uses the following process to determine the amount of performance-based fee earned by the contractor. The S&T score from each evaluator shall be used to determine an initial numerical score for S&T (see Table A, below), and the rollup of the scores for each M&O Performance Goal shall be used to determine an initial numerical M&O score (see Table B, below).

<table>
<thead>
<tr>
<th>S&amp;T Performance Goal</th>
<th>Numerical Score</th>
<th>Weight¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Mission Accomplishment</td>
<td>≥30%</td>
<td></td>
</tr>
<tr>
<td>2.0 Design, Fabrication, Construction and Operation of Research Facilities</td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td>3.0 Science and Technology Program Management</td>
<td>25%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initial S&amp;T Score</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>M&amp;O Performance Goal</th>
<th>Numerical Score</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.0 Integrated Safety, Health, and Environmental Protection</td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td>6.0 Business Systems</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>8.0 Integrated Safeguards and Security Management and Emergency Management Systems</td>
<td>25%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initial M&amp;O Score</th>
</tr>
</thead>
</table>

These initial scores will then be adjusted based on the numerical score for Goal 4.0 (see Table C, below).

<table>
<thead>
<tr>
<th>Numerical Score</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial S&amp;T Score</td>
<td>0.75</td>
</tr>
<tr>
<td>Goal 4.0</td>
<td>0.25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Final S&amp;T Score</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Numerical Score</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial M&amp;O Score</td>
<td>0.75</td>
</tr>
<tr>
<td>Goal 4.0</td>
<td>0.25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Final M&amp;O Score</th>
</tr>
</thead>
</table>

The percentage of the available performance-based fee that may be earned by the Contractor shall be determined based on the final score for S&T (see Table C) and then compared to Figure 3, below. The final score for M&O from Table C shall then be utilized to determine the final fee multiplier (see Figure 3), which shall be utilized to determine the overall amount of performance-based fee earned for FY 2020 as calculated within Table D.

¹ For Goals 1.0 and 2.0, the weights are based on fiscal year costs for each program distributed between Goals 1.0 and 2.0; however, a minimum weight of 30% for Goal 1.0 is required regardless of program distribution. For Goal 3.0, the weight is set as a fixed percentage of 25% for all laboratories.
<table>
<thead>
<tr>
<th>Overall Final Score for either S&amp;T or M&amp;O from Table C.</th>
<th>Percent S&amp;T Fee Earned</th>
<th>M&amp;O Fee Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>4.2</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>4.1</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>4.0</td>
<td>97%</td>
<td>100%</td>
</tr>
<tr>
<td>3.9</td>
<td>97%</td>
<td>100%</td>
</tr>
<tr>
<td>3.8</td>
<td>97%</td>
<td>100%</td>
</tr>
<tr>
<td>3.7</td>
<td>94%</td>
<td>100%</td>
</tr>
<tr>
<td>3.6</td>
<td>94%</td>
<td>100%</td>
</tr>
<tr>
<td>3.5</td>
<td>94%</td>
<td>100%</td>
</tr>
<tr>
<td>3.4</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.3</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.2</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.1</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.0</td>
<td>88%</td>
<td>95%</td>
</tr>
<tr>
<td>2.9</td>
<td>88%</td>
<td>95%</td>
</tr>
<tr>
<td>2.8</td>
<td>88%</td>
<td>95%</td>
</tr>
<tr>
<td>2.7</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>2.6</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>2.5</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>2.4</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.3</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.2</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.1</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.0</td>
<td>50%</td>
<td>75%</td>
</tr>
<tr>
<td>1.9</td>
<td>50%</td>
<td>75%</td>
</tr>
<tr>
<td>1.8</td>
<td>50%</td>
<td>75%</td>
</tr>
<tr>
<td>1.7</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.6</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.5</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.4</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.3</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.2</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.1</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.0 to 0.8</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>0.7 to 0.0</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Figure 3. Performance-Based Fee Earned Scale
The Federal Acquisition Regulations (FAR) requirements for using and administering cost-plus-award-fee contracts were modified to provide for a five-level adjectival grading system with associated levels of available fee.\textsuperscript{2} SC has addressed the FAR Part 16 language by mapping its standard numerical scores and associated fee determinations to the FAR Adjectival Rating System, as noted in Figure 4.

<table>
<thead>
<tr>
<th>Range of Overall Final Score for S&amp;T from Figure 3.</th>
<th>FAR Adjectival Rating</th>
<th>Maximum Performance-Fee Pool Available to be Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 to 4.3</td>
<td>Excellent</td>
<td>100%</td>
</tr>
<tr>
<td>2.5 to 3.0</td>
<td>Very Good</td>
<td>88%</td>
</tr>
<tr>
<td>2.1 to 2.4</td>
<td>Good</td>
<td>75%</td>
</tr>
<tr>
<td>1.8 to 2.0</td>
<td>Satisfactory</td>
<td>50%</td>
</tr>
<tr>
<td>0.0 to 1.7</td>
<td>Unsatisfactory</td>
<td>0%</td>
</tr>
</tbody>
</table>

Figure 4. Crosswalk of SC Numerical Scores and the FAR Part 16 Adjectival Rating System

Adjustment to the Letter Grade and/or Performance-Based Fee Determination:
The lack of performance objectives and notable outcomes in this plan do not diminish the need to comply with minimum contractual requirements. Although the performance-based Goals and their corresponding Objectives shall be the primary means utilized in determining the Contractor’s performance grade and/or amount of performance-based fee earned, the Contracting Officer may unilaterally adjust the rating and/or reduce the otherwise earned fee based on the Contractor’s performance against all contract requirements as set forth in the Prime Contract. While reductions may be based on performance against any contract

\textsuperscript{2} See Policy Flash 2010-05, Federal Acquisition Circular 2005-37.
requirement, specific note should be made to contract clauses which address reduction of fee including, Standards of Contractor Performance Evaluation, DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount, and Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts. Data to support rating and/or fee adjustments may be derived from other sources to include, but not limited to, operational awareness (daily oversight) activities; “For Cause” reviews (if any); and other outside agency reviews (OIG, GAO, DCAA, etc.), as needed.

The adjustment of a grade and/or reduction of otherwise earned fee will be determined by the severity of the performance failure and consideration of mitigating factors. DEAR 970.5215-3 Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts is the mechanism used for reduction of fee as it relates to performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety. Its guidance can also serve as an example for reduction of fee in other areas.

The final Contractor performance-based grades for each Goal and fee earned determination will be contained within a year-end report, documenting the results from the DOE review. The report will identify areas where performance improvement is necessary and, if required, provide the basis for any performance-based rating and/or fee adjustments made from the otherwise earned rating/fee based on Performance Goal achievements.
II. PERFORMANCE GOALS, OBJECTIVES & NOTABLE OUTCOMES

Background
The current performance-based management approach to oversight within DOE has established a new culture within the Department with emphasis on the customer-supplier partnership between DOE and the laboratory contractors. It has also placed a greater focus on mission performance, best business practices, cost management, and improved contractor accountability. Under the performance-based management system the DOE provides clear direction to the laboratories and develops annual performance plans (such as this one) to assess the contractors' performance in meeting that direction in accordance with contract requirements. The DOE policy for implementing performance-based management includes the following guiding principles:

- Performance objectives are established in partnership with affected organizations and are directly aligned to the DOE strategic goals;
- Resource decisions and budget requests are tied to results; and
- Results are used for management information, establishing accountability, and driving long-term improvements.

The performance-based approach focuses the evaluation of the Contractor’s performance against these Performance Goals. Progress against these Goals is measured through the use of a set of Objectives. The success of each Objective will be measured based on demonstrated performance by the laboratory, and on a set of notable outcomes that focus laboratory leadership on the specific items that are the most important initiatives and highest risk issues the laboratory must address during the year. These notable outcomes should be objective, measurable, and results-oriented to allow for a definitive determination of whether or not the specific outcome was achieved at the end of the year.

Performance Goals, Objectives, and Notable Outcomes
The following sections describe the Performance Goals, their supporting Objectives, and associated notable outcomes for FY 2020.
GOAL 1.0 Provide for Efficient and Effective Mission Accomplishment

The science and technology programs at the Laboratory produce high-quality, original, and creative results that advance science and technology; demonstrate sustained scientific progress and impact; receive appropriate external recognition of accomplishments; and contribute to overall research and development goals of the Department and its customers.

The weight of this Goal is TBD (minimum weight is 30%).

The Provide for Efficient and Effective Mission Accomplishment Goal measures the overall effectiveness and performance of the Contractor in delivering science and technology results which contribute to and enhance the DOE’s (or other relevant supporting agencies’) mission of protecting our national and economic security by providing world-class scientific research capacity and advancing scientific knowledge by supporting world-class, peer-reviewed scientific results, which are recognized by others.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science, other cognizant HQ Program Offices, and other customers as identified below. The overall Goal score from each HQ Program Office and/or customer is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 1.1). The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2020.

- Office of Advanced Scientific Computing Research (ASCR)
- Office of Biological and Environmental Research (BER)
- Office of Basic Energy Sciences (BES)
- Office of Fusion Energy Sciences (FES)
- Office of High Energy Physics (HEP)
- Office of Workforce Development for Teachers and Scientists (WDTS)
- Office of Fossil Energy (FE)
- Office of Energy Efficiency and Renewable Energy (EE)
- Office of Environmental Management (EM)
- Office of Intelligence (IN)
- National Nuclear Security Administration (NA)
- Office of Nuclear Energy (NE)
- Office of Electricity Delivery and Energy Reliability (OE)
- Department of Homeland Security (DHS)
- National Institutes of Health (NIH)
- Nuclear Regulatory Commission (NRC)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 1.2, below). The overall score earned is then compared to Table 1.3 to determine the overall letter grade for this Goal. The Contractor’s success in meeting each Objective shall be determined based on the Contractor’s performance as viewed by the Office of Science, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the
weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2020 as compared to the total cost for those remaining HQ Program Offices.

**Objectives**

**1.1 Provide Science and Technology Results with Meaningful Impact on the Field**

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Performance of the Laboratory with respect to proposed research plans;
- Performance of the Laboratory with respect to community impact and peer review; and
- Performance of the Laboratory with respect to impact to DOE (or other customer) mission needs.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Impact of publications on the field, as measured primarily by peer review;
- Impact of S&T results on the field, as measured primarily by peer review;
- Impact of S&T results outside the field indicating broader interest;
- Impact of S&T results on DOE or other customer mission(s);
- Successful stewardship of mission-relevant research areas;
- Delivery on proposed S&T plans;
- Significant awards (Nobel Prizes, R&D 100, FLC, etc.);
- Invited talks, citations, making high-quality data available to the scientific community; and
- Development of tools and techniques that become standards or widely-used in the scientific community.

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<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</table>
| A+           | In addition to satisfying the conditions for B+  
- There are **significant research areas for which** the Laboratory **has exceeded the expectations** of the proposed research plans in **significant ways through creative, new, or unconventional methods** that allow greater scientific reach than expected.  
- S&T conducted at the Laboratory **has resolved one of the most critical questions in the field, or has changed the way the research community thinks about a particular field through paradigm shifting discoveries** that would be considered the most influential discovery of the decade for that field.  
- S&T conducted at the Laboratory **provided major advances that significantly accelerate DOE or other customer mission(s).** |
| A            | In addition to satisfying the conditions for B+  
- There are **important examples** where the Laboratory **exceeded the expectations of the proposed research plans in significant ways through creative, new, or unconventional methods that allow greater scientific reach than expected.**  
- **All areas of S&T conducted at the Laboratory are of exceptional or outstanding merit and quality.**  
- S&T conducted at the Laboratory has **significant positive impact** to DOE or other customer missions. |
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<tr>
<th>Letter Grade</th>
<th>Definition</th>
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| A-           | In addition to satisfying the conditions for B+:  
• There are *important examples* where the Laboratory exceeded *the expectations* of the proposed research plans.  
• *Significant areas* of S&T conducted at the Laboratory are of *exceptional or outstanding* merit and quality.  
• S&T conducted at the Laboratory *significantly impact* DOE or other customer missions. |
| B+           | The Laboratory has achieved each of the following objectives:  
• The Laboratory has successfully executed proposed research plans.  
• S&T conducted at the Laboratory are of *high* scientific merit and quality  
• S&T conducted at the Laboratory *advance* DOE or other customer missions. |
| B            | • The Laboratory has successfully executed proposed research plans.  
• S&T conducted at the Laboratory *advance* DOE or other customer missions.  
BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
• S&T conducted at the Laboratory are *not uniformly of high* merit and quality OR some *areas of research, previously supported*, have become uncompetitive OR the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities. |
| B-           | The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
• The Laboratory has *failed to successfully execute* proposed research plans but *contingencies were in place* such that no funding was or will be terminated. OR S&T conducted at the Laboratory *does little to advance* DOE or other customer missions.  
• *Significant areas of S&T conducted* at the Laboratory are *not of high* merit and quality OR some *areas of research, previously supported*, have become uncompetitive OR the Laboratory do not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities. |
| C            | The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
• *In several significant aspects*, the Laboratory *failed to deliver* on proposed research plans using *available resources* such that some funding was or will be terminated OR S&T conducted at the Laboratory *failed to contribute* to DOE or other customer missions  
• *Significant areas of S&T conducted* at the Laboratory are of *poor* merit and quality OR some *areas of research, previously supported*, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities. |
| D            | The Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
• Multiple *program elements* at the Laboratory *failed to deliver* on proposed research plans using *available resources* such that significant funding was or will be terminated.  
• Multiple *significant areas of S&T conducted* at the Laboratory are of *poor* merit and quality OR some *areas of research, previously supported*, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities.  
• S&T conducted at the Laboratory *failed to contribute* to DOE or other customer missions. |
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<th>Letter Grade</th>
<th>Definition</th>
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<tr>
<td>F</td>
<td>The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:</td>
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<tr>
<td></td>
<td>• Multiple program elements at the Laboratory failed to deliver on proposed research plans using available resources resulting in total termination of funding.</td>
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<tr>
<td></td>
<td>• Multiple significant areas of S&amp;T conducted at the Laboratory are of poor merit and quality OR some areas of research, previously supported, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities OR the Laboratory has been found to have engaged in gross scientific incompetence and/or scientific fraud.</td>
</tr>
<tr>
<td></td>
<td>• S&amp;T conducted at the Laboratory failed to contribute to DOE or other customer missions.</td>
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</table>

1.2 Provide Quality Leadership in Science and Technology that Advances Community Goals and DOE Mission Goals.

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Innovativeness / Novelty of research ideas put forward by the Laboratory;
- Extent to which Laboratory staff members take on substantive or formal leadership roles in their community;
- Extent to which Laboratory staff members take on formal leadership roles in DOE, SC and/or other customer activities; and
- Extent to which Laboratory staff members contribute thoughtful and thorough peer reviews and other research assessments as requested by DOE, SC or other supporting customers.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.:

- Willingness to pursue novel approaches and/or demonstration of innovative solutions to problems;
- Willingness to take on high-risk/high payoff/long-term research problems, evidence that previous risky decisions by the PI/research staff have proved to be correct and are paying off;
- The uniqueness and challenge of science pursued, recognition for doing the best work in the field;
- Extent and quality of collaborative efforts;
- Staff members visible in leadership positions in the scientific community;
- Involvement in professional organizations, National Academies panels and workshops,
- Effectiveness in driving the direction and setting the priorities of the community in a research field; and
- Success in competition for resources.
<table>
<thead>
<tr>
<th><strong>Letter Grade</strong></th>
<th><strong>Definition</strong></th>
</tr>
</thead>
</table>
| A+              | In addition to satisfying the conditions for B+, the following conditions hold for ALL Laboratory staff:  
  - Laboratory staff members have *leadership positions* in professional organizations AND in National Academy or equivalent panels to discuss and determine further research directions;  
  - Laboratory staff members have *leadership positions* in DOE (or in other supporting agencies) sponsored workshops and strategic planning activities, for example, Laboratory staff members chair or co-chair DOE-sponsored or other supporting agency-sponsored workshops and strategic planning activities.  
  - The Laboratory program consistently produces and submits competitive proposals that challenge convention and open *significant new fields* for research that are well aligned with DOE and/or other supporting agencies mission needs and the Laboratory has a strong recognized role in setting priorities and driving the direction in key research areas and are internationally recognized leaders in the field.  
  - Laboratory staff hold *leadership positions* in multi-institutional research collaborations. |
| A               | In addition to satisfying the conditions for B+  
  - Laboratory staff members have *leadership positions* in professional organizations AND *staff has contributing role* in National Academy or equivalent panels to discuss further research directions;  
  - Laboratory staff members have *leadership positions* in DOE and/or in other supporting agencies sponsored workshops and strategic planning activities.  
  - The Laboratory program consistently produces and submits competitive proposals that challenge convention and open *significant new fields* for research that are well aligned with DOE or other supporting agency mission needs and the Laboratory has a strong recognized role in setting priorities and driving the direction in key research areas.  
  - Laboratory staff hold *leadership positions* in multi-institutional research collaborations. |
| A-              | In addition to satisfying the conditions for B+  
  - Laboratory staff members have *leadership positions* in professional organizations OR *staff has contributing role* in National Academy or equivalent panels to discuss further research directions;  
  - Laboratory staff members have *leadership positions* in DOE and/or other supporting agency-sponsored workshops and strategic planning activities.  
  - The Laboratory program consistently submits competitive proposals that challenge convention and open *significant* new avenues for research that are well aligned with DOE or other supporting agencies mission needs.  
  - Laboratory staff hold *leadership positions* in multi-institutional research collaborations. |
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</thead>
</table>
| **B+**      | The Laboratory has achieved each of the following objectives:  
• Laboratory staff members are *active participants* in professional organizations, committees, and activities, and take on leadership responsibilities commensurate with experience and expertise.  
• Laboratory staff members are *active participants* in DOE and/or other supporting agencies-sponsored workshops and strategic planning activities.  
• Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies.  
• The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE or other supporting agencies mission needs.  
• Laboratory staff are *active participants* in multi-institutional research collaborations.  

BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
• Although *regular participants* in professional organizations, committees, and activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*  
• Although *regular participants* in DOE and/or other supported agencies sponsored workshops and strategic planning activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*  
• Although *active members of multi-institutional research collaborations, the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.* |
| **B**       | *Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE and/or other supporting agencies.*  
• The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE and/or other supporting agencies mission needs.  

BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
• The Laboratory program submits competitive proposals *but these either lack innovation or are not well aligned with DOE or other supporting agencies mission needs.*  
• Laboratory staff are *infrequent participants* in professional organizations, committees, and activities, and *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*  
• Laboratory staff are *infrequent participants* in DOE or other supported agencies sponsored workshops and strategic planning activities, and *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*  
• Although *active members of multi-institutional research collaborations, the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.* |
| **B-**      | *Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies.*  

BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
• The Laboratory program submits competitive proposals *but these either lack innovation or are not well aligned with DOE or other supporting agencies mission needs.*  
• Laboratory staff are *infrequent participants* in professional organizations, committees, and activities, and *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*  
• Laboratory staff are *infrequent participants* in DOE or other supported agencies sponsored workshops and strategic planning activities, and *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.*  
• Although *active members of multi-institutional research collaborations, the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.* |
Letter Grade | Definition
--- | ---
C | The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:
- Laboratory staff members do not reliably contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies.
- Some areas of research, previously supported, are no longer competitive.
- Laboratory staff members are infrequent participants in professional organizations, committees, and activities, AND the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.
- Laboratory staff members are infrequent participants in DOE or other supported agencies sponsored workshops and strategic planning activities, and the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.
- Although Laboratory staff members are active members of multi-institutional research collaborations, the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.

D | The Laboratory fails to meet the conditions for B+ because the Laboratory staff are working on problems that are no longer at the forefront of science and are considered mundane.

F | Review has found the Laboratory staff to be guilty of gross scientific incompetence and/or scientific fraud.

Notable Outcomes

- **BER:** Provide a report of accomplishments from the first project year along with future plans for the Terrestrial Aquatic Interface (TAI) mid-Atlantic project. (Objective 1.1)
- **BER:** Collaborate on the LBNL-led report of accomplishments from the first operation year and future plans for the National Microbiome Data Collaborative. (Objective 1.1)

<table>
<thead>
<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Weight</th>
<th>Overall Score</th>
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<tbody>
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<td>Office of Advanced Scientific Computing Research</td>
<td>1.1 Impact</td>
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<td>50%</td>
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<td></td>
<td>1.2 Leadership</td>
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<td>50%</td>
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<td></td>
<td>Overall ASCR Total</td>
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<tr>
<td>Office of Biological and Environmental Research</td>
<td>1.1 Impact</td>
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<tr>
<td></td>
<td>1.2 Leadership</td>
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<td></td>
<td>Overall BER Total</td>
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<tr>
<td>Office of Basic Energy Sciences</td>
<td>1.1 Impact</td>
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<tr>
<td></td>
<td>1.2 Leadership</td>
<td></td>
<td>50%</td>
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<td>Overall BES Total</td>
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<td>Office of Fusion Energy Sciences</td>
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<td></td>
<td>1.2 Leadership</td>
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A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.
## Overall FES Total

### Office of High Energy Physics
- 1.1 Impact: 50%
- 1.2 Leadership: 50%

### Office of Workforce Development for Teachers and Scientists
- 1.1 Impact: 80%
- 1.2 Leadership: 20%

### Office of Cybersecurity, Energy Security, and Emergency Response
- 1.1 Impact: 50%
- 1.2 Leadership: 50%

### Overall HEP Total

### Overall WDTTS Total

### Office of Fossil Energy
- 1.1 Impact: 50%
- 1.2 Leadership: 50%

### Office of Energy Efficiency and Renewable Energy
- 1.1 Impact: 60%
- 1.2 Leadership: 40%

### Office of Environmental Management
- 1.1 Impact: 40%
- 1.2 Leadership: 60%

### Office of Intelligence
- 1.1 Impact: 65%
- 1.2 Leadership: 35%

### National Nuclear Security Administration
- 1.1 Impact: 60%
- 1.2 Leadership: 40%

### Office of Nuclear Energy
- 1.1 Impact: 50%
- 1.2 Leadership: 50%

### Office of Electricity Delivery and Energy Reliability
- 1.1 Impact: 50%
- 1.2 Leadership: 50%

### Department of Homeland Security
- 1.1 Impact: 60%
- 1.2 Leadership: 40%

### Overall NE Total

### Overall EM Total

### Overall IN Total

### Overall NA Total

### Overall EE Total

### Overall CR Total

### Overall FE Total

### National Institutes of Health
## Table 1.1 – Program Performance Goal 1.0 Score Development

<table>
<thead>
<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Funding Weight (cost)</th>
<th>Overall Weighted Score</th>
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<tbody>
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<td>Office of Advanced Scientific Computing Research</td>
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<td>Office of Cybersecurity, Energy Security, and Emergency Response</td>
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<td>Office of Electricity Delivery and Energy Reliability</td>
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<td>Department of Homeland Security</td>
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<tr>
<td>National Institutes of Health</td>
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<tr>
<td>Nuclear Regulatory Commission</td>
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### Performance Goal 1.0 Total

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<th>Total Score</th>
<th>Final Grade</th>
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<tbody>
<tr>
<td>4.3-4.1</td>
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<tr>
<td>4.0-3.8</td>
<td>A</td>
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<tr>
<td>3.7-3.5</td>
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<tr>
<td>3.4-3.1</td>
<td>B+</td>
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<td>3.0-2.8</td>
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<td>2.7-2.5</td>
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<td>1.7-1.1</td>
<td>C-</td>
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<tr>
<td>1.0-0.8</td>
<td>D</td>
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<tr>
<td>0.7-0.0</td>
<td>F</td>
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### Table 1.3 – Goal 1.0 Final Letter Grade

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4 The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2020.
GOAL 2.0 Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities

The Laboratory provides effective and efficient strategic planning; fabrication, construction and/or operations of Laboratory research facilities; and are responsive to the user community.

The weight of this Goal is TBD%.

The Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities Goal shall measure the overall effectiveness and performance of the Contractor in planning for and delivering leading-edge specialty research and/or user facilities to ensure the required capabilities are present to meet today’s and tomorrow’s complex challenges. It also measures the Contractor’s innovative operational and programmatic means for implementation of systems that ensures the availability, reliability, and efficiency of these facilities; and the appropriate balance between R&D and user support.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The overall Goal score from each Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 2.1). Final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2020.

- Office of Biological and Environmental Research (BER)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 2.2 below). The overall score earned is then compared to Table 2.3 to determine the overall letter grade for this Goal. Individual Program Office weightings for each of the Objectives identified below are provided within Table 2.1. The Contractor’s success in meeting each Objective shall be determined based on the Contractor’s performance as viewed by DOE HQ Office of Science’s (SC) Program Offices for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2020 as compared to the total cost for those remaining HQ Program Offices.

Objectives

2.1 Provide Effective Facility Design(s) as Required to Support Laboratory Programs (i.e., activities leading up to CD-2)

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory’s delivery of accurate and timely information required to carry out the critical decision and budget formulation process;
- The Laboratory’s ability to meet the intent of DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets;
- The extent to which the Laboratory appropriately assesses risks and contingency needs; and
• The extent to which the Laboratory is effective in its unique management role and partnership with HQ.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

• The quality of the scientific justification for proposed facilities resulting from preconceptual R&D;
• The technical quality of conceptual and preliminary designs and the credibility of the associated cost estimates
• The credibility of plans for the full life cycle of proposed facilities including financing options;
• The leveraging of existing facilities and capabilities of the DOE Laboratory complex in plans for proposed facilities; and
• The novelty and potential impact of new technologies embodied in proposed facilities.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| A+           | In addition to satisfying all conditions for B+; the Laboratory *exceeds expectations* in all of these categories:  
  • The Laboratory is recognized by the research community as the leader for making the science case for the acquisition;  
  • The Laboratory takes the initiative to demonstrate and thoroughly document the potential for transformational scientific advancement.  
  • Approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective.  
  • Reviews repeatedly confirm strong potential for scientific discovery in areas that support the Department’s mission, and potential to change a discipline or research area’s direction.  
  • The Laboratory identifies, analyzes and champions novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing and these efforts result in significant cost estimate and/or risk reductions without loss or, or while enhancing capability. |
| A            | In addition to satisfying all conditions for B+, *all* of the following conditions are also met:  
  • The Laboratory is recognized by the research community as a leader for making the science case for the acquisition;  
  • The Laboratory takes the initiative to demonstrate the potential for revolutionary scientific advancement working in partnership with HQ  
  • The Laboratory identifies, analyzes, and champions, to HQ and Site office, novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing. |
| A-           | In addition to satisfying all conditions for B+, *all* of the following conditions are also met:  
  • The approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective  
  • Reviews repeatedly confirm potential for scientific discovery in areas that support the Department’s mission, and potential to change a discipline or research area’s direction. |
The Laboratory has achieved each of the following objectives:

- The Laboratory displays leadership and commitment in the development of quality analyses, preliminary designs, and related documentation to support the approval of the mission need (CD-0), the alternative selection and cost range (CD-1) and the performance baseline (CD-2).
- Documentation requested by the programs is provided in a timely and thorough manner.
- The Laboratory keeps DOE appraised of the status, near-term plans and the resolution of problems on a regular basis; anticipates emerging issues that could impact plans and takes the initiative to inform DOE of possible consequences.
- The Laboratory solves problems and addresses issues to avoid adverse impacts to the project.

The Laboratory fails to meet expectations in one of the areas listed under B+.

The Laboratory fails to meet expectations in several of the areas listed under B+.

The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the required analyses and documentation developed by the Laboratory are EITHER not innovative, OR reflect a lack of commitment and leadership.

The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the Laboratory fails to provide a compelling justification for the acquisition.

The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the approaches proposed by the Laboratory are based on fraudulent assumptions; the science case is weak to non-existent, and the business case is seriously flawed.

### 2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components (execution phase, post CD-2 to CD-4)

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory’s adherence to DOE Order 413.3 Project Management for the Acquisition of Capital Assets;
- Successful fabrication of facility components by the Laboratory;
- The Laboratory’s effectiveness in meeting construction schedule and budget;
- The quality of key Laboratory staff overseeing the project(s); and
- The extent to which the Laboratory maintains open, effective, and timely communication with HQ regarding issues and risks.

In addition to satisfying all conditions for A,

- There is high confidence throughout the execution phase that the project will be completed significantly under budget and/or ahead of schedule while meeting or exceeding all performance baselines;
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| A            | In addition to satisfying all conditions for B+,  
• The Laboratory has identified and implemented practices that would allow the project scope to be significantly expanded if such were desirable, without impact on baseline cost or schedule;  
• The Laboratory always provides exemplary project status reports on time to DOE and takes the initiative to communicate emerging problems or issues.  
• Reviews identify environment, safety and health practices to be exemplary.  
• There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline; |
| A-           | In addition to satisfying all conditions for B+,  
• The Laboratory has identified practices that would allow for the project scope to be expanded if such were desirable, without impact on baseline cost or schedule;  
• Problems are identified and corrected by the Laboratory promptly, with no impact on scope, cost or schedule  
• The Laboratory provides particularly useful project status reports on time to DOE and regularly takes the initiative to communicate emerging problems or issues.  
• Reviews identify environment, safety and health practices to exceed expectations.  
• There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline; |
| B+           | The Laboratory has achieved each of the following objectives  
• The project meets CD-2 performance measures;  
• The Laboratory provides sustained leadership and commitment to environment, safety and health;  
• Reviews regularly recognize the Laboratory for being proactive in the management of the execution phase of the project;  
• To a large extent, problems are identified and corrected by the Laboratory with little, or no impact on scope, cost or schedule;  
• DOE is kept informed of project status on a regular basis; reviews regularly indicate project is expected to meet its cost/schedule performance baseline; |
| B            | The Laboratory provides sustained leadership and commitment to environment, safety and health BUT  
• The project fails to meet expectations in one of the remaining areas listed under B+. |
| B-           | The Laboratory provides sustained leadership and commitment to environment, safety and health BUT  
• The project fails to meet expectations in several of the areas listed under B+ |
| C            | The Laboratory provides sustained leadership and commitment to environment, safety and health BUT  
The project fails to meet expectations in several of the areas listed under B+ AND  
• Reviews indicate project remains at risk of breaching its cost/schedule performance baseline;  
• Reports to DOE can vary in degree of completeness |
| D            | The project fails to meet conditions for B+ in at least one of the following areas:  
• Reviews indicate project is likely to breach its cost/schedule performance baseline;  
• Laboratory commitment to environment, safety and health issues is inadequate;  
• Reports to DOE are largely incomplete; Laboratory commitment to the project has subsided. |
The project fails to meet conditions for B+ in at least one of the following areas:
- Laboratory falsifies data during project execution phase;
- Shows disdain for executing the project within minimal standards for environment, safety or health,
- Fails to keep DOE informed of project status;
- Recent reviews indicate that the project is expected to breach its cost/schedule performance baseline.

### 2.3 Provide Efficient and Effective Operation of Facilities

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The availability, reliability, performance, and efficiency of Laboratory facility(ies);
- The degree to which the facility is optimally arranged to support the user community;
- The extent to which Laboratory R&D is conducted to develop/expand the capabilities of the facility(ies);
- The Laboratory’s effectiveness in balancing resources between facility R&D and user support; and
- The quality of the process used to allocate facility time to users.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>In addition to satisfying all conditions for B+; <em>all</em> of the following conditions are also met</td>
</tr>
<tr>
<td></td>
<td>- Performance of the facility <em>exceeds</em> expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, and capability;</td>
</tr>
<tr>
<td></td>
<td>- The schedule and the costs associated with the ramp-up to steady state operations are <em>significantly less</em> than planned and are acknowledged to be ‘leadership caliber’ by reviews;</td>
</tr>
<tr>
<td></td>
<td>- Data on environment, safety, and health continues to be exemplary and widely regarded as among the ‘best in class’</td>
</tr>
<tr>
<td></td>
<td>- The Laboratory took extraordinary means to deliver an extraordinary result for the users and the program in the performance/ review period.</td>
</tr>
<tr>
<td>A</td>
<td>In addition to satisfying all conditions for B+; <em>all</em> of the following conditions are also met</td>
</tr>
<tr>
<td></td>
<td>- Performance of the facility <em>exceeds</em> expectations as defined before the start of the year in most of these categories: cost of operations, users served, availability, and capability;</td>
</tr>
<tr>
<td></td>
<td>- The schedule and the costs associated with the ramp-up to steady state operations are <em>less</em> than planned and are acknowledged to be ‘leadership caliber’ by reviews;</td>
</tr>
<tr>
<td></td>
<td>- Data on environment, safety, and health continues to be <em>exemplary</em> and widely regarded as among the ‘best in class.’</td>
</tr>
<tr>
<td>A-</td>
<td>In addition to satisfying all conditions for B+, <em>one</em> of the following conditions is met:</td>
</tr>
<tr>
<td></td>
<td>- Performance of the facility <em>exceeds</em> expectations as defined before the start of the year in any of these categories: cost of operations, users served, availability, and capability;</td>
</tr>
<tr>
<td></td>
<td>- The schedule and the costs associated with the ramp-up to steady state operations are <em>less</em> than planned and are acknowledged to be among the best by reviews;</td>
</tr>
</tbody>
</table>
Letter Grade | Definition
--- | ---
B+ | The Laboratory has achieved each of the following objectives:
- Performance of the facility meets expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, capability (for example, beam delivery, luminosity, peak performance, etc),
- The schedule and the costs associated with the ramp-up to steady state operations occur as planned;
- Data on environment, safety, and health continues to be very good as compared with other projects in the DOE.
- User surveys meet program expectations and reflect that the Laboratory is responsive to user needs.
B | The project fails to meet expectations in one of the areas listed under B+.
B- | The project fails to meet expectations in more than one of the areas listed under B+.
C | Performance of the facility fails to meet expectations in many of the areas listed under B+; for example,
- The cost of operations is unexpectedly high and availability of the facility is unexpectedly low, the number of users is unexpectedly low, capability is well below expectations.
- The facility operates at steady state, on cost and on schedule, but the reliability of performance is somewhat below planned values, or the facility operates at steady state, but the associated schedule and costs exceed planned values.
- Commitment to environment, safety, and health is satisfactory.
D | Performance of the facility fails to meet expectations in many of the areas listed under B+; for example,
- The cost of operations is unexpectedly high and availability of the facility is unexpectedly low; capability is well below expectations.
- The facility operates somewhat below steady state, on cost and on schedule, and the reliability of performance is somewhat below planned values, or the facility operates at steady state, but the associated schedule and costs exceed planned values.
- Commitment to environment, safety, and health is inadequate.
F | - The facility fails to operate; the facility operates well below steady state and/or the reliability of the performance is well below planned values.
- Laboratory commitment to environment, safety, and health issues is inadequate.

2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The extent to which the facility is being used to perform influential science;
- The Laboratory’s efforts to take full advantage of the facility to generate impactful S&T results;
- The extent to which the facility is strengthened by a resident Laboratory research community that pushes the envelope of what the facility can do and/or are among the scientific leaders of the community;
- The Laboratory’s ability to appropriately balance access by internal and external user communities; and
- The extent to which there is a healthy program of outreach to the scientific community.
Letter Grade | Definition
--- | ---
A+ | In addition to meeting all measures under A, • The Laboratory took extraordinary means to deliver an extraordinary result for a new user community.
A | In addition to satisfying all conditions for B+; all of the following conditions are met • An aggressive outreach program is in place and has been documented as attracting new communities to the facility; • Reviews consistently find that the facility capability or scope of research potential significantly exceeds expectations for example, due to newly discovered capabilities or exposure to new research communities; OR Reviews find that multiple disciplines are using the facility in new and novel ways that the facility is being used to pursue influential science.
A- | In addition to satisfying all conditions for B+, all of the following conditions are met • A strong outreach program is in place; • Reviews find that the facility capability or scope of research potential exceeds expectations for example, due to newly discovered capabilities or exposure to new research communities; OR Reviews document how multiple disciplines are using the facility in new and novel ways and/or that the facility is being used to pursue important science.
B+ | The Laboratory has achieved each of the following objectives: • Reviews find / validate that the facility is being used for influential science; • The scope of facility capabilities is challenged and broadened by resident users; • The Laboratory effectively manages user allocations; • The Laboratory effectively maintains the facility to required performance standards (for example, runtime, luminosity, etc) • A healthy outreach program is in place.
B | The Laboratory fails to meet expectations in one of the areas listed under B+
B- | The Laboratory fails to meet expectations in several of the areas listed under B+
C | The Laboratory fails to meet expectations in many of the areas listed under B+
D | Reviews find that there are few facility users, few of whom are using the facility in novel ways to produce impactful science; research base is very thin.
F | Laboratory staff does not possess capabilities to operate and/or use the facility adequately.

Notable Outcomes

- None

<table>
<thead>
<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numeric Score</th>
<th>Weight</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Biological and Environmental Research</td>
<td>2.1 Provide Effective Facility Design(s)</td>
<td></td>
<td></td>
<td>0%</td>
</tr>
</tbody>
</table>

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5 A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.
<table>
<thead>
<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numeric Score</th>
<th>Weight</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.3 Provide Efficient and Effective Operation of Facilities</td>
<td></td>
<td></td>
<td>90%</td>
<td></td>
</tr>
<tr>
<td>2.4 Utilization of Facility(ies) to Provide Impactful S&amp;T Results and Benefits to External User Communities</td>
<td></td>
<td></td>
<td>10%</td>
<td></td>
</tr>
</tbody>
</table>

Overall BER Total

Table 2.1 – Program Performance Goal 2.0 Score Development

<table>
<thead>
<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Funding Weight (cost)</th>
<th>Overall Weighted Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Biological and Environmental Research</td>
<td></td>
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</tbody>
</table>

Performance Goal 2.0 Total

Table 2.2 – Overall Performance Goal 2.0 Score Development

<table>
<thead>
<tr>
<th>Total Score</th>
<th>4.3-4.1</th>
<th>4.0-3.8</th>
<th>3.7-3.5</th>
<th>3.4-3.1</th>
<th>3.0-2.8</th>
<th>2.7-2.5</th>
<th>2.4-2.1</th>
<th>2.0-1.8</th>
<th>1.7-1.1</th>
<th>1.0-0.8</th>
<th>0.7-0.0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

Table 2.3 – Goal 2.0 Final Letter Grade

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6 The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2020.
GOAL 3.0  Provide Effective and Efficient Science and Technology Program Management

The Laboratory provides effective program vision and leadership; strategic planning and development of initiatives; recruits and retains a quality scientific workforce; and provides outstanding research processes, which improve research productivity.

The weight of this Goal is 25%.

The Provide Effective and Efficient Science and Technology Program Management Goal shall measure the Contractor’s overall management in executing S&T programs. Dimensions of program management covered include: 1) providing key competencies to support research programs to include key staffing requirements; 2) providing quality research plans that take into account technical risks, identify actions to mitigate risks; and 3) maintaining effective communications with customers to include providing quality responses to customer needs.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science, other cognizant HQ Program Offices, and other customers as identified below. The overall Goal score from each HQ Program Office and/or customer is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 3.1). The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2020 provided by the Program Offices listed below.

- Office of Advanced Scientific Computing Research (ASCR)
- Office of Biological and Environmental Research (BER)
- Office of Basic Energy Sciences (BES)
- Office of Fusion Energy Sciences (FES)
- Office of High Energy Physics (HEP)
- Office of Workforce Development for Teachers and Scientists (WDTS)
- Office of Fossil Energy (FE)
- Office of Energy Efficiency and Renewable Energy (EE)
- Office of Environmental Management (EM)
- Office of Intelligence (IN)
- National Nuclear Security Administration (NA)
- Office of Nuclear Energy (NE)
- Office of Electricity Delivery and Energy Reliability (OE)
- Department of Homeland Security (DHS)
- National Institutes of Health (NIH)
- Nuclear Regulatory Commission (NRC)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 3.2 below). The overall score earned is then compared to Table 3.3 to determine the overall letter grade for this Goal. The Contractor’s success in meeting each Objective shall be determined based on the Contractor’s performance as viewed by the Office of Science, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2020 as compared to the total cost for those remaining HQ Program Offices.
Objectives

3.1 Provide Effective and Efficient Strategic Planning and Stewardship of Scientific Capabilities and Program Vision

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality of the Laboratory’s strategic plan;
- The extent to which the Laboratory shows strategic vision for research;
- The extent to which programs of research take advantage of Laboratory capabilities—research programs are more than the sum of their individual project parts;
- The extent to which the Laboratory undertakes research for which it is uniquely qualified;
- The extent to which lab plans are aligned with DOE or other supporting agency mission goals;
- The extent to which the Laboratory programs are balanced between high-/low-risk research for a sustainable program; and
- The extent to which the Laboratory is able to retain and recruit staff for a sustainable program.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Articulation of scientific vision;
- Development and maintenance of core competencies,
- Ability to attract and retain highly qualified staff;
- Efficiency and effectiveness of joint planning (e.g., workshops) with outside community;
- Creativity and robustness of ideas for new facilities and research programs; and
- Willingness to take on high-risk/high-payoff/long-term research problems, evidence that the Laboratory “guessed right” in that previous risky decisions proved to be correct and are paying off.
- The depth and breadth of Laboratory research portfolio and its potential for growth.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</table>
| A+           | In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve each of the following:  
  - *Most* of the Laboratory’s core competencies are recognized as world leading;  
  - The Laboratory has attracted and retained world-leading scientists in *most* programs;  
  - There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off;  
  - The Laboratory has succeeded in developing new core competencies of *outstanding* quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC or other supporting department or agency missions; |
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| **A**       | In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve the following:  
  - *Several* of the Laboratory’s core competencies are recognized as world leading;  
  - The Laboratory has attracted and retained world-leading scientists in several programs;  
  - There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off;  
  - The Laboratory has succeeded in developing *new* core competencies of *high* quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC/other supporting departments or agency missions. |
| **A-**      | In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve at least one of the following:  
  - At least one of the Laboratory’s core competencies is recognized as *world-leading*;  
  - The Laboratory has attracted and retained *world-leading* scientists in one or more programs;  
  - The Laboratory has a coherent plan for addressing future workforce challenges. |
| **B+**      | The execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve each of the following objectives:  
  - The Laboratory has articulated a coherent and compelling strategic plan that has been developed with input from external research communities and headquarters guidance, which, where appropriate, includes a coherent plan for building smaller research programs into new core competencies; and reallocates resources away from less effective programs.  
  - The Laboratory has demonstrated the ability to attract and retain professional scientific staff in support of its strategic vision.  
  - The portfolio of Laboratory research balances the needs for both high-risk/ high-payoff research and stewardship of mission-critical research.  
  - The Laboratory’s research portfolio takes advantage of unique capabilities at the Laboratory.  
  - The Laboratory’s research portfolio includes activities for which the Laboratory is uniquely capable. |
| **B**       | The Laboratory fails to satisfy one of the conditions for B+; for example  
  - The Laboratory’s strategic plan is only *partially* coherent and is not entirely well-connected with external communities;  
  - The portfolio of Laboratory research does *not* appropriately balance high-risk/ high-payoff research and stewardship of mission-critical research;  
  - The Laboratory has developed and maintained *some*, but *not all*, of its core competencies.  
  - The plan to attract and retain professional scientific staff is *lacking* strategic vision. |
| **B-**      | The Laboratory fails to satisfy *several* of the conditions for B+, including at least one of the following:  
  - Weak programmatic vision insufficiently connected with external communities;  
  - Development and maintenance of only a few core competencies  
  - Little attention to maintaining the correct balance between high-risk and mission-critical research;  
  - Inability to attract and retain talented scientists in some programs. |
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| C            | The Laboratory fails to satisfy *several* of the conditions for B+, including at least one of the following reasons:  
• The Laboratory’s strategic plan lacks strategic vision and lacks appropriate coordination with appropriate stakeholders including external research groups.  
• The Laboratory’s strategic plan does not provide for sufficient maintenance of core competencies  
• Plan to attract and retain professional scientific staff is unlikely to be successful or does not focus on strategic capabilities. |
| D            | The Laboratory fails to satisfy *several* of the conditions for B+, and specifically  
• The Laboratory has demonstrated little effort in developing a strategic plan.  
• The Laboratory has done little to develop and maintain core competencies  
• The Laboratory has had minimal success in attracting and retaining professional scientific staff. |
| F            | The Laboratory has:  
• Made limited or ineffective attempts to develop a strategic plan;  
• Not demonstrated the ability to develop and maintain core competencies, has failed to propose high-risk/high-reward research and has failed to steward mission-critical areas;  
• Failed to attract even reasonably competent scientists and technical staff. |

### 3.2 Provide Effective and Efficient Science and Technology Project/Program/Facilities Management

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory’s management of R&D programs and facilities according to proposed plans;
- The extent to which the Laboratory’s management of projects/programs/facilities supports the Laboratory strategic plan;
- Adequacy of the Laboratory’s consideration of technical risks;
- The extent to which the Laboratory is successful in identifying/avoiding technical problems;
- Effectiveness in leveraging across multiple areas of research and between research and facility capabilities;
- The extent to which the Laboratory demonstrates a willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.); and
- The use of LDRD and other Laboratory investments and overhead funds to improve the competitiveness of the Laboratory.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.:

- Laboratory plans that are reviewed by experts outside of lab management and/or include broadly-based input from within the Laboratory.
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| A+          | In addition to meeting the all expectations under A,  
  - The Laboratory has taken extraordinary measures to deliver an extraordinary result of  
    critical importance to DOE or other relevant supporting agency missions, which could  
    include the delivery of a critical technology or insight in response to a National emergency. |
| A            | In addition to satisfying the conditions for B+,  
  - The Laboratory’s implementation of project/program/facility plans has led directly to  
    effective R&D programs/facility operations that exceed program expectations in several  
    programmatic areas. Examples are listed under A-. |
| A-           | In addition to satisfying the conditions for B+,  
  - The Laboratory’s implementation of project/program/facility plans has led directly to  
    effective R&D programs/facility operations that exceed program expectations in more  
    than one programmatic area. Examples of performance that exceeds expectations include:  
    - The Laboratory’s implementation of project/program/facility plans has led directly to  
      significant cost savings and/or significantly higher productivity than expected;  
    - Project/program/facility plans prove to be robust against changing scientific and fiscal  
      conditions through contingency planning;  
    - The Laboratory has demonstrated creativity and forceful leadership in development and/or  
      proactive management of its project/program/facility plans to reduce or eliminate risk;  
    - The Laboratory’s proposals for new initiatives are funded through reallocation of  
      resources from less effective programs.  
  - Research plans and management actions are proactive, not reactive, as evidenced by  
    making hard decisions and taking strong actions; and  
  - Management is prepared for budget fluctuations and changes in DOE or other supporting  
    agency program priorities – multiple contingencies are planned for; and  
  - LDRD investments, overhead funds, and other Laboratory funds are used to strengthen lab  
    plans and fill critical gaps in the Laboratory portfolio enabling it to respond to future DOE  
    or other relevant supporting agency initiatives and/or national emergencies. |
| B+           | The Laboratory has achieved each of the following objectives:  
  - Project/program/facility plans exist for all major projects/programs/facilities.  
  - Project/program/facility plans are consistent with known budgets, are based on reasonable  
    assessments of technical risk, are well-aligned with DOE or other relevant supporting  
    agency interests, provide sufficient flexibility to respond to unforeseen directives and  
    opportunities, and effectively leverage other Laboratory resources and expertise.  
  - The Laboratory has implemented the project/program/facility plans and has effective  
    methods of tracking progress.[1]  
  - The Laboratory demonstrates willingness to make tough decisions (i.e., cut programs with  
    sub-critical mass of expertise, divert resources to more promising areas, etc.).  
  - The Laboratory’s implementation of project/program/facility plans has led directly to  
    effective R&D programs/facility operations.  
  - LDRD investments and other overhead funds are managed appropriately. |
| B            | Project/program/facility plans exist for all major projects/programs/facilities.  
  - The Laboratory has implemented the project/program/facility plans. BUT the Laboratory fails to meet at least one of the conditions for B+. |
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<tr>
<th>Letter Grade</th>
<th>Definition</th>
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| B-           | - Project/program/facility plans exist for all major projects/programs/facilities.  
              - The Laboratory has implemented the project/program/facility plans.  
              BUT the Laboratory fails to meet several of the conditions for B+. |
| C            | - Project/program/facility plans exist for most major projects/programs/facilities.  
              BUT the Laboratory has failed to implement the project/program/facility plans AND the Laboratory fails to meet several of the conditions for B+. |
| D            | - Project/program/facility plans do not exist for a significant fraction of the Laboratory’s major projects/programs/facilities;  
              OR  
              - Significant work at the Laboratory is not in alignment with the project/program/facility plans |
| F            | The Laboratory has failed to conduct project/program/facility planning activities. |

### 3.3 Provide Efficient and Effective Communications and Responsiveness to Headquarters Needs

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality, accuracy and timeliness of the Laboratory’s response to customer requests for information;  
- The extent to which the Laboratory provides point-of-contact resources and maintains effective internal communications hierarchies to facilitate efficient determination of the appropriate point-of-contact for a given issue or program element;  
- The effectiveness of the Laboratory’s communications and depth of responsiveness under extraordinary or critical circumstances; and  
- The effectiveness of Laboratory management in accentuating the importance of communication and responsiveness.

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| A+           | In addition to meeting the all expectations under A,  
              - The Laboratory’s effective communication and extraordinary responsiveness in the face of extreme situations or a national emergency had a materially positive impact on the outcome of the event and/or DOE or other relevant supporting agencies’ mission objectives. |
| A            | In addition to satisfying the conditions for B+, the Laboratory also meets all of the following:  
              - Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices;  
              - Communication channels are well-defined and information is effectively conveyed;  
              - Responses to HQ requests for information from all Laboratory representatives are prompt, thorough, correct and succinct; important or critical information is delivered in real-time;  
              - Laboratory representatives always initiate a communication with HQ on emerging Laboratory issues; headquarters is never surprised to learn of emerging Laboratory issues through outside channels. |
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| A-           | In addition to satisfying the conditions for B+,  
• Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices;  
• Responses to requests for information are prompt, thorough, and economical/succinct at all levels of interaction;  
• Laboratory representatives *often* initiate communication with HQ on emerging Laboratory issues; and  
• under critical circumstances, essential information is delivered in real-time |
| B+           | The Laboratory has achieved each of the following objectives:  
• Staff throughout the Laboratory organization engage in good communication practices;  
• Responses to requests for information are prompt and thorough;  
• The accuracy and integrity of the information provided is never in doubt;  
• Up-to-date point-of-contact information is widely available for all programmatic areas; and  
• Headquarters is always and promptly informed of both positive and negative events at the Laboratory |
| B            | The Laboratory failed to meet the conditions for B+ in a few instances |
| B-           | The Laboratory fails to meet the conditions for B+ for one of the following reasons:  
• Responses to requests for information do not provide the minimum requirements to meet HQ needs;  
  While the integrity of the information provided is never in doubt, its accuracy sometimes is;  
• Laboratory representatives do not take the initiative to alert HQ to emerging Laboratory issues. |
| C            | The Laboratory fails to meet the conditions for B+ for one or more of the following reasons:  
• Responses to requests for information frequently fail to provide the minimum requirements to meet HQ needs  
• The Laboratory used outside channels or circumvented HQ in conveying critical information;  
• The integrity and/or accuracy of information provided is sometimes in doubt;  
• Laboratory management fails to demonstrate that its employees are held accountable for ensuring effective communication and responsiveness;  
• Laboratory representatives failed to alert HQ to emerging Laboratory issues. |
| D            | The Laboratory fails to meet the conditions for B+ for one of the following reasons:  
• Laboratory staff are generally well-intentioned in communication but consistently ineffective and/or incompetent;  
• The Laboratory management fails to emphasize the importance of effective communication and responsiveness |
| F            | The Laboratory fails to meet the conditions for B+ for one of the following reasons  
• Laboratory staff are openly hostile and/or non-responsive to requests for information – emails and phone calls are consistently ignored;  
• Responses to requests for information are consistently incorrect, inaccurate or fraudulent – information is not organized, is incomplete, or is fabricated. |
Notable Outcomes

- **BES**: Develop an updated comprehensive strategic plan for the expanding materials research portfolio supported by BES-MSE, including considerations of supporting capabilities and instrumentation. (Objective 3.1)

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1 A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.
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Table 3.1 – Program Performance Goal 3.0 Score Development

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Office of Biological and Environmental Research
Office of Basic Energy Sciences
Office of Fusion Energy Sciences
Office of High Energy Physics
Office of Workforce Development for Teachers and Scientists
Office of Cybersecurity, Energy Security, and Emergency Response
Office of Fossil Energy
Office of Energy Efficiency and Renewable Energy
Office of Environmental Management
Office of Intelligence
National Nuclear Security Administration
Office of Nuclear Energy
Office of Electricity Delivery and Energy Reliability
Department of Homeland Security
National Institutes of Health
Nuclear Regulatory Commission

Performance Goal 3.0 Total

Table 3.2 – Overall Performance Goal 3.0 Score Development²

² The final weights to be utilized for determining weighted scores will be determined following the end of the
Table 3.3 – Goal 3.0 Final Letter Grade

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performance period and will be based on actual cost for FY 2020.
Attachment I

Program Office Goal & Objective Weightings
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<td>50%</td>
<td>50%</td>
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</tr>
<tr>
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<td>50%</td>
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<td>50%</td>
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<tr>
<td><strong>Goal 2.0 Design, Fabrication, Construction and Operation of Facilities</strong></td>
<td></td>
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<tr>
<td>2.1 Design of Facility (the initiation phase and the definition phase, i.e. activities leading up to CD-2)</td>
<td>0%</td>
<td></td>
<td></td>
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<tr>
<td>2.2 Construction of Facility / Fabrication of Components (execution phase, Post CD-2 to CD-4)</td>
<td>0%</td>
<td></td>
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<tr>
<td>2.3 Operation of Facility</td>
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<tr>
<td>2.4 Utilization of Facility to Grow and Support Lab's Research Base and External User Community</td>
<td>10%</td>
<td></td>
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</tr>
<tr>
<td><strong>Goal 3.0 Program Management</strong></td>
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<tr>
<td>3.1 Effective and Efficient Strategic Planning and Stewardship</td>
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<td>20%</td>
<td>30%</td>
<td>40%</td>
<td>30%</td>
<td>20%</td>
</tr>
<tr>
<td>3.2 Project/Program/Facilities Management</td>
<td>40%</td>
<td>30%</td>
<td>40%</td>
<td>30%</td>
<td>45%</td>
<td>50%</td>
</tr>
<tr>
<td>3.3 Communications and Responsiveness</td>
<td>30%</td>
<td>50%</td>
<td>30%</td>
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Attachment I

Program Office Goal & Objective Weightings
All Other Customers

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<th>NE</th>
<th>OE</th>
<th>DHS</th>
<th>NIH</th>
<th>NRC</th>
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<tr>
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<td>Weight</td>
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<td>Weight</td>
<td>Weight</td>
<td>Weight</td>
<td>Weight</td>
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<tr>
<td>1.1 Impact</td>
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<td>60%</td>
<td>40%</td>
<td>65%</td>
<td>60%</td>
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<td>50%</td>
</tr>
<tr>
<td>1.2 Leadership</td>
<td>50%</td>
<td>50%</td>
<td>40%</td>
<td>60%</td>
<td>35%</td>
<td>40%</td>
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<tr>
<td>3.0 Program Management</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>3.1 Effective and Efficient Strategic Planning and Stewardship</td>
<td>20%</td>
<td>34%</td>
<td>20%</td>
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<td>25%</td>
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<td>20%</td>
<td>40%</td>
<td>50%</td>
<td>34%</td>
</tr>
<tr>
<td>3.2 Project/Program / Facilities Management</td>
<td>45%</td>
<td>33%</td>
<td>30%</td>
<td>25%</td>
<td>40%</td>
<td>46%</td>
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<tr>
<td>3.3 Communication s and Responsiveness</td>
<td>35%</td>
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<td>50%</td>
<td>35%</td>
<td>24%</td>
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<td>35%</td>
<td>25%</td>
<td>0%</td>
<td>33%</td>
</tr>
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</table>

9 Objective weightings indicated for non-science customers are reflective of FY 2020 weightings and will be updated as those customers provide their weightings. Final Objective weightings will be incorporated, as appropriate, once they are determined by each HQ Program Office and provided to the Site Office. Should a HQ Program Office fail to provide final Objective weightings before the end of the first quarter FY 2020, the preliminary weightings provided shall become final.
GOAL 4.0 Provide Sound and Competent Leadership and Stewardship of the Laboratory

This Goal evaluates the Contractor’s Leadership capabilities in leading the direction of the overall Laboratory, the responsiveness of the Contractor to issues and opportunities for continuous improvement, and corporate office involvement/commitment to the overall success of the Laboratory.

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in overall Contractor Leadership’s planning for, integration of, responsiveness to and support for the overall success of the Laboratory. This may include, but is not limited to, the quality of Laboratory Vision/Mission strategic planning documentation and progress in realizing the Laboratory vision/mission; the ability to establish and maintain long-term partnerships/relationships with the scientific and local communities as well as private industry that advance, expand, and benefit the ongoing Laboratory mission(s) and/or provide new opportunities/capabilities; implementation of a robust assurance system; Laboratory leadership facilitate and effectively manage external engagements and partnerships; Laboratory and Corporate Office Leadership’s ability to instill responsibility and accountability down and through the entire organization; overall effectiveness of communications with DOE; understanding, management and allocation of the costs of doing business at the Laboratory commensurate with associated risks and benefits; utilization of corporate resources to establish joint appointments or other programs/projects/activities to strengthen the Laboratory; and advancing excellence in stakeholder relations to include good corporate citizenship within the local community.

Objectives:

4.1 Leadership and Stewardship of the Laboratory

By which we mean: The performance of the laboratory’s senior management team as demonstrated by their ability to do such things as:

- Define an exciting yet realistic scientific vision for the future of the laboratory,
- Make progress in realizing the vision for the laboratory,
- Establish and maintain long-term partnerships/relationships that maintain appropriate relations with the scientific and local communities, and
- Develop and leverage appropriate relations with private industry to the benefit of the laboratory and the U.S. taxpayer.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>The Senior Leadership of the laboratory has made outstanding progress (on an order of magnitude scale) over the previous year in realizing their vision for the laboratory, and has had a demonstrable impact on the Department and the Nation. Strategic plans are of outstanding quality, have been externally recognized and referenced for their excellence, and have an impact on the vision/plans of other national laboratories. The Senior leadership of the laboratory may have been faced very difficult challenges and plotted, successfully, its own course through the difficulty, with minimal hand-holding by the Department. Partners in the scientific and local communities applaud the laboratory in national fora, and the Department is strengthened by this.</td>
</tr>
<tr>
<td>Letter Grade</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>A</td>
<td>The Senior Leadership of the laboratory has made significant progress over the previous year in realizing their vision for the laboratory, and has through this has had a demonstrable positive impact on the Office of Science and the Department. Strategic plans are of outstanding quality, and recognize and reflect the vision/plans of other national laboratories. Faced with difficult challenges, actions were taken by the Senior leadership of the laboratory to redirect laboratory activities to enhance the long-term future of the laboratory. Partners in the scientific and local communities applaud the laboratory in national fora, and the Department is strengthened by this.</td>
</tr>
<tr>
<td>A-</td>
<td>The laboratory senior management performs better than expected (B+ grade) in these areas.</td>
</tr>
<tr>
<td>B+</td>
<td>The Senior Leadership of the laboratory has made significant progress over the previous year in realizing their vision for the laboratory. Strategic plans present long range goals that are both exciting and realistic. Decisions and actions taken by the lab leadership align work, facilities, equipment and technical capabilities with the laboratory vision and plan. The Senior leadership of the laboratory faced difficult challenges and successfully plotted its own course through the difficulty, with help from the Department. Partners in the scientific and local communities are supportive of the laboratory.</td>
</tr>
<tr>
<td>B</td>
<td>The Senior Leadership of the laboratory has made little progress over the previous year in realizing their vision for the laboratory. Strategic plans present long range goals that are exciting and realistic; however DOE is not fully confident that the laboratory is taking the actions necessary for the goals to be achieved. The Laboratory is not fully engaged with its partners/relationships in the scientific and local communities to maximize the potential benefits these relations have for the laboratory.</td>
</tr>
<tr>
<td>C</td>
<td>The Senior Leadership of the laboratory has made no progress over the previous year in realizing their vision for the laboratory or aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long range goals that are either unexciting or unrealistic. Business plans exist, but they are not linked to the strategic plan and do not inspire DOE’s confidence that the strategic goals will be achieved. Partnerships with the scientific and local communities with potential to advance the laboratory exist, but they may not always be consistent with the mission of or vision for the laboratory. Affected communities and stakeholders are mostly supportive of the laboratory and aligned with the management’s vision for the laboratory.</td>
</tr>
<tr>
<td>D</td>
<td>The Senior Leadership of the laboratory has made no progress or has back-slid over the previous year in realizing their vision for the laboratory or aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long range goals that are neither exciting nor realistic. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, or unlikely. Affected communities and stakeholders are not adequately engaged with the laboratory and indicate non-alignment with DOE priorities.</td>
</tr>
<tr>
<td>F</td>
<td>The Senior Leadership of the laboratory has made no progress or has back-slid over the previous year in realizing their vision for the laboratory or in aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long range goals that are not aligned with DOE priorities or the mission of the laboratory. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, and unlikely, and/or the senior management team does not demonstrate a concerted effort to develop, leverage, and maintain relations with the scientific and local communities to assist the laboratory in achieving a successful future. Affected communities and stakeholders are openly non-supportive of the laboratory and DOE priorities.</td>
</tr>
</tbody>
</table>
4.2 Management and Operation of the Laboratory

By which we mean: The performance of the laboratory’s senior management team as demonstrated by their ability to do such things as:

- Implement a robust contractor assurance system,
- Understand the costs of doing business at the laboratory and prioritize the management and allocation of these costs commensurate with their associated risks and benefits,
- Instill a culture of accountability and responsibility down and through the entire organization;
- Ensure good and timely communication between the laboratory and SC headquarters and the Site Office so that DOE can deal effectively with both internal and external constituencies.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>The laboratory has a nationally or internationally recognized contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk, and is working to help others internal and external to the Department establish similarly outstanding practices. The laboratory understands the drivers of cost at their lab, and are prioritizing and managing these costs commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that all the national laboratories and the Department as a whole benefits.</td>
</tr>
<tr>
<td>A</td>
<td>The laboratory has improved dramatically in the last year in all of the following: building a robust and transparent contractor assurance system that integrates internal and external (corporate) evaluation processes to evaluate risk; demonstrating the use of this system in making decisions that are aligned with the laboratory’s vision and strategic plan; understanding the drivers of cost at their lab, and prioritizing and managing these costs consistent with their associated risks and benefits to the laboratory and the SC laboratory system; demonstrating laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization; assuring communication between the laboratory and SC headquarters that is beneficial to both the lab and SC.</td>
</tr>
<tr>
<td>A-</td>
<td>The laboratory senior management performs better than expected (B+ grade) in these areas.</td>
</tr>
<tr>
<td>B+</td>
<td>The laboratory has a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The laboratory can demonstrate use of this system in making decisions that are aligned with the laboratory’s vision and strategic plan. The laboratory understands the drivers of cost at their lab, and are prioritizing and managing these costs commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that there are no surprises or embarrassments.</td>
</tr>
</tbody>
</table>
The laboratory has a contractor assurance system in place but further improvements are necessary, or the link between the CAS and the laboratory’s decision-making processes are not evident. The laboratory understands the drivers of cost at their lab, but they are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is mostly evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that there are no significant surprises or embarrassments.

The laboratory lacks a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The laboratory cannot demonstrate use of this system in making decisions that are aligned with the laboratory’s vision and strategic plan. The laboratory does not fully understand the drivers of cost at their lab, and thus are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Communication between the laboratory and SC headquarters and the Site Office is such that there has been at least one significant surprise or embarrassment.

The laboratory lacks a contractor assurance system, doesn’t understand the drivers of cost at their lab, and is not prioritizing and managing costs. SC HQ must intercede in management decisions. Poor communication between the laboratory and SC headquarters and the Site Office has resulted in more than one significant surprise or embarrassment.

Lack of management by the laboratory’s senior management has put the future of the laboratory at risk, or has significantly hurt the reputation of the Office of Science.

### 4.3 Leadership of External Engagements and Partnerships

*By which we mean:* the performance of the laboratory leadership team to achieve the following:

- Establish a vision for developing and promoting technology transfer activities at the laboratory that align with the laboratory research portfolio, further DOE missions, and promote national and economic security of the United States;
- Identify potential partners, implement outreach activities, and manage external engagements to promote accomplishment of technology transfer objectives, and to develop a feedback loop with industry that both informs planned and ongoing technology transfer activities; and
- Foster a culture of entrepreneurship at the laboratory that encourages staff at all levels to consider potential technology transfer opportunities within their program work and other laboratory activities.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>A+</td>
<td>Laboratory leadership has an exemplary technology transfer vision and is a leader across the complex in engaging external partners to identify technology transfer activities that are in strategic alignment with the laboratory research portfolio and in furtherance of the DOE mission. The laboratory is recognized as a preeminent leader in the technology transfer community across the DOE complex, and has assisted other national laboratories to develop strategies for identifying and engaging external partnerships. The laboratory staff are strongly encouraged to seek out and pursue potential technology transfer activities that are clearly connected and/or complementary to their research and development work at the laboratory and the laboratory is able to demonstrate how this outreach informs their ongoing technology transfer efforts.</td>
</tr>
</tbody>
</table>
The laboratory has a strong vision for engaging strategic partners and identifying strong connections between the laboratory research portfolio and potential technology transfer activities. The laboratory is one of the leaders in the technology transfer community across the DOE complex. The laboratory staff are encouraged to pursue technology transfer activities that are connected and/or complementary to their research and development work at the laboratory.

- **A-** The laboratory senior management performs better than expected (B+ grade) in these areas.

- **B+** The laboratory has a vision for engaging external partners, capturing intellectual property, and connecting laboratory research with potential technology transfer activities in furtherance of the DOE mission. Laboratory staff are encouraged to seek out and engage in opportunities for technology transfer activities.

- **B** The laboratory has some external engagements that support development of a vision for technology transfer activities at the laboratory; however, this vision is not fully realized and requires more work to identify potential external partners or challenges in capturing intellectual property.

- **C** The laboratory lacks a vision and the mechanisms to implement a strategy to promote technology transfer at the laboratory.

- **D** Laboratory leadership lacks a vision and have not supported the mechanisms/resources necessary to develop or implement an external engagement strategy to promote technology transfer activities at the laboratory. Laboratory staff are discouraged from seeking out opportunities to solicit external partner input and are also discouraged from identifying potential activities for technology transfer and from engaging in efforts to protect intellectual property.

- **F** Lack of vision and resources by the laboratory’s senior management has hindered the ability of the laboratory to engage external partners and has hurt the laboratory’s ability to identify and plan for technology activities, this failure has significantly hurt the Department’s ability to achieve its missions.

**4.4 Contractor Value-added**

By which we mean: the additional benefits that accrue to the laboratory and the Department of Energy by virtue of having this particular M&O contractor in place. Included here, typically, are things over which the laboratory leadership does not have immediate authority, such as:

- Corporate involvement/contributions to deal with challenges at the laboratory;
- Using corporate resources to establish joint appointments or other programs/projects/activities that strengthen the lab; and
- Providing other contributions to the laboratory that enable the lab to do things that are good for the laboratory and its community and that DOE cannot supply.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>A+</strong></td>
<td>The laboratory has been transformed as a result of the many, substantial, additional benefits that accrue to the lab as a result of this contractor’s operation of the laboratory.</td>
</tr>
<tr>
<td><strong>A</strong></td>
<td>Over the past year, the laboratory has become demonstrably stronger, better and more attractive as a place of employment as a result of the many, substantial, additional benefits that accrue to the lab as a result of this contractor’s operation of the laboratory.</td>
</tr>
<tr>
<td><strong>A-</strong></td>
<td>The laboratory senior management performs better than expected (B+ grade) in these areas.</td>
</tr>
</tbody>
</table>
The laboratory enjoys additional benefits above and beyond those associated with managing the laboratory’s activities that accrue as a result of this contractor’s operation of the laboratory.

B

The laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the laboratory; help by the contractor is needed to strengthen the laboratory.

C

The laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the laboratory; the contractor seems unable to help the laboratory.

D

The laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the laboratory; the contractor’s efforts are inconsistent with the interests of the laboratory and the Department.

F

The laboratory enjoys no additional benefits that accrue as a result of this contractor’s operation of the laboratory; the contractor’s efforts are counter-productive to the interests of the Department.

Notable Outcomes

- **PNSO**: Implement the new line management approach to increase management accountability as part of a multi-year plan to implement the proposed new operating model at PNNL. (Objective 4.2)
- **SC**: Develop a plan to address the findings and recommendations from the scheduled peer review of the laboratory’s diversity and inclusion efforts, conducted by the SC Office of the Deputy Director for Science Programs. Brief SC on the plan by June 1, 2020. (Objective 4.2)
- **PNSO/SC**: The Laboratory must keep senior SC leadership informed of key events (e.g., VIP/protocol visits, news releases, media requests) through timely population of the Science News Dashboard with all the relevant information on such activities and/or through other appropriate mechanisms. (Objective 4.2)
- **PNSO/SC**: Demonstrate full implementation of program(s) that protects sensitive government information, technologies, equipment, intellectual property, and assets as reflected in applicable regulations and DOE Orders; e.g., O 142.3A Unclassified Foreign Visits and Assignments, P 485.1 Foreign Engagements with DOE National Laboratories, O 486.1 Foreign Government Talents Recruitment Programs, 550.1 Official Travel, O 481.1E, Strategic Partnership Projects, and O 483.1B, DOE Cooperative Research and Development Agreements. (Objective 4.2)
- **PNSO**: Develop and execute a multi-year plan to increase awareness of PNNL (its impact, capabilities, etc.) within the local community, the region, its research peers, and potential collaborators (to include both the Sequim and Richland campuses). (Objective 4.3)
- **PNSO/SC**: The Laboratory and contractor leadership must ensure that all communication with interested stakeholders on DOE/SC program priorities/objectives are aligned with DOE/SC goals, strategies and guidance. (Objective 4.4)

<table>
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<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numeric Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
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<tr>
<td>Goal 4.0 – Provide Sound and Competent Leadership and Stewardship of the Laboratory</td>
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<tr>
<td>4.1 Leadership and Stewardship of the Laboratory</td>
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<td>30%</td>
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<td></td>
</tr>
<tr>
<td>4.2 Management and Operation of the Laboratory</td>
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<td></td>
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</tr>
<tr>
<td>4.3 Leadership of External Engagements and Partnerships</td>
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<td>10%</td>
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<tr>
<td>4.4 Contractor Value-Added</td>
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<td>3.7-3.5</td>
<td>3.4-3.1</td>
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<tr>
<td>Final Grade</td>
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<td>A</td>
<td>A-</td>
<td>B+</td>
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</tbody>
</table>

Table 4.2 – Goal 4.0 Final Letter Grade
GOAL 5.0 Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection

The weight of this Goal is 30%.

This Goal evaluates the Contractor’s overall success in deploying, implementing, and improving integrated ES&H systems that efficiently and effectively support the mission(s) of the Laboratory.

5.1 Provide an Efficient and Effective Worker Health and Safety Program
5.2 Provide Efficient and Effective Environmental Management System

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in protecting workers, the public, and the environment. This may include, but is not limited to, minimizing the occurrence of environment, safety and health (ESH) incidents; effectiveness of the Integrated Safety Management (ISM) system; effectiveness of work planning, feedback, and improvement processes; the strength of the safety culture throughout the Laboratory; the strength of the Nuclear/Facility Safety Programs; the effective development, implementation and maintenance of an efficient and effective Environmental Management system; and the effectiveness of responses to identified hazards and/or incidents.

Notable Outcomes

- PNSO: Expand deployment of Integrated Work Planning and Control to include radiological activities and new space planning module, while completing deployment in non-radiological laboratory spaces. (Objective 5.1)
- PNSO: Implement established plans that 1) resolve underrated electrical components and 2) deliver improved nuclear and criticality safety program performance. (Objective 5.1)

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numeric Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
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<td>Goal 5.0 - Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection.</td>
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<tr>
<td>5.1 Provide an Efficient and Effective Worker Health and Safety Program</td>
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<tr>
<td>5.2 Provide an Efficient and Effective Environmental Management System</td>
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Table 5.1 – Performance Goal 5.0 Score Development

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</tr>
<tr>
<td>4.0-3.8</td>
<td>A</td>
</tr>
<tr>
<td>3.7-3.5</td>
<td>A-</td>
</tr>
<tr>
<td>3.4-3.1</td>
<td>B+</td>
</tr>
<tr>
<td>3.0-2.8</td>
<td>B</td>
</tr>
<tr>
<td>2.7-2.5</td>
<td>B-</td>
</tr>
<tr>
<td>2.4-2.1</td>
<td>C+</td>
</tr>
<tr>
<td>2.0-1.8</td>
<td>C</td>
</tr>
<tr>
<td>1.7-1.1</td>
<td>C-</td>
</tr>
<tr>
<td>1.0-0.8</td>
<td>D</td>
</tr>
<tr>
<td>0.7-0.0</td>
<td>F</td>
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</tbody>
</table>

Table 5.2 – Goal 5.0 Final Letter Grade
GOAL 6.0  Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)

The weight of this Goal is 25%.

This Goal evaluates the Contractor’s overall success in deploying, implementing, and improving integrated business systems that efficiently and effectively support the mission(s) of the Laboratory.

6.1 Provide an Efficient, Effective, and Responsive Financial Management System
6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System
6.3 Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program
6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality
6.5 Demonstrate Effective Transfer of Knowledge and Technology and the Commercialization of Intellectual Assets

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the development, deployment and integration of foundational program (e.g., Contractor Assurance, Quality, Financial Management, Acquisition Management, Property Management, and Human Resource Management) systems across the Laboratory. This may include, but is not limited to, minimizing the occurrence of management systems support issues; quality of work products; continual improvement driven by the results of audits, reviews, and other performance information; the integration of system performance metrics and trends; the degree of knowledge and appropriate utilization of established system processes/procedures by Contractor management and staff; benchmarking and performance trending analysis. The DOE evaluator(s) shall consider the Laboratory’s performance in making progress toward comprehensive collection and submission to OSTI of peer-reviewed accepted manuscripts for journal articles (and associated metadata) resulting from DOE-funded research as called for in the DOE Public Access Plan, and cooperation with the Department in meeting the relevant requirements to provide other forms of scientific and technical information to OSTI per DOE O 241.1B. The DOE evaluator(s) shall also consider the stewardship of the pipeline of innovations and resulting intellectual assets at the Laboratory along with impacts and returns created/generated as a result of technology transfer, work for others and intellectual asset deployment activities.

Notable Outcomes

- **PNSO**: Develop and institutionalize a multi-year strategy that addresses challenges related to talent attraction/retention. (Objective 6.3)

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numeric Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
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<td>Goal 6.0 - Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)</td>
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<tr>
<td>6.1 Provide an Efficient, Effective, and Responsive Financial Management System(s)</td>
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<tr>
<td>6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System</td>
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<tr>
<td>6.3 Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program</td>
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<td>6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality</td>
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<td>6.5 Demonstrate Effective Transfer of Knowledge and Technology and the Commercialization of Intellectual Assets</td>
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<td></td>
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**Performance Goal 6.0 Total**

Table 6.1 – Performance Goal 6.0 Score Development

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<th>1.0-0.8</th>
<th>0.7-0.0</th>
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</thead>
<tbody>
<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
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<td>B</td>
<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

Table 6.2 – Goal 6.0 Final Letter Grade
GOAL 7.0  Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs

The weight of this Goal is 20%.

This Goal evaluates the overall effectiveness and performance of the Contractor in planning for, delivering, and operations of Laboratory facilities and equipment needed to ensure required capabilities are present to meet today’s and tomorrow’s mission(s) and complex challenges.

7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures Site Capability to Meet Mission Needs

7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to Support the Continuation and Growth of Laboratory Missions and Programs

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in facility and infrastructure programs. This may include, but is not limited to, the management of real property assets to maintain effective operational safety, worker health, environmental protection and compliance, property preservation, and cost effectiveness; planning and executing strategies to promote the resilience and reliability of laboratory infrastructure; effective facility utilization, maintenance and budget execution; day-to-day management and utilization of space in the active portfolio; maintenance and renewal of building systems, structures and components associated with the Laboratory’s facility and land assets; management of energy use, conservation, and sustainability practices; the integration and alignment of the Laboratory’s comprehensive strategic plan with capabilities; facility planning, forecasting, and acquisition; the delivery of accurate and timely information required to carry out the critical decision and budget formulation process; quality of site and facility planning documents; and Cost and Schedule Performance Index performance for facility and infrastructure projects.

Notable Outcomes

- **PNSO:** Update the campus strategy based on detailed planning for FY20-24 campus changes to include utilization of new facilities, reuse of vacated space, lease management, and associated budget and project planning. (Objective 7.1)
- **PNSO/SC:** Effectively plan, execute, and successfully deliver SC projects equal to or less than $50 million that have been delegated to the Laboratory Director by SC under DOE O 413.3B [Atmospheric Radiation Measurement Aerial Observation Capability (Air-ARM)]. Clearly demonstrate successful accomplishment of all work planned for FY 2020 in accordance with SC guidance." (Objective 7.2)

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numeric Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
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<td>Goal 7.0 - Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs.</td>
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<td>7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures Site Capability to Meet Mission Needs</td>
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<td>7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to Support the Continuation and Growth of Laboratory Missions and Programs</td>
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Table 7.1 – Performance Goal 7.0 Score Development
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<th>1.0-0.8</th>
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<tbody>
<tr>
<td>Final Grade</td>
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<td>A</td>
<td>A-</td>
<td>B+</td>
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<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
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</tbody>
</table>

Table 7.2 – Goal 7.0 Final Letter Grade
GOAL 8.0  Sustain and Enhance the Effectiveness of Integrated Safeguards and Security Management (ISSM) and Emergency Management Systems

The weight of this Goal is 25%.

This Goal evaluates the Contractor’s overall success in safeguarding and securing Laboratory assets that supports the mission(s) of the Laboratory in an efficient and effective manner and provides an effective emergency management program.

8.1 Provide an Efficient and Effective Emergency Management System
8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information
8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the safeguards and security, cyber security and emergency management program systems. This may include, but is not limited to, the commitment of leadership to strong safeguards and security, cyber security and emergency management systems; the integration of these systems into the culture of the Laboratory; the degree of knowledge and appropriate utilization of established system processes/procedures by Contractor management and staff; maintenance and the appropriate utilization of Safeguards, Security, and Cyber risk identification, prevention, and control processes/activities; and the prevention and management controls and prompt reporting and mitigation of events as necessary.

Notable Outcomes

- **PNSO**: Identify, classify, assess and develop a risk mitigation strategy for connection-capable, research-supporting and infrastructure/operations systems and devices (OT/IoT) in PNNL-managed facilities. (Objective 8.2)

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numeric al Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
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<td>8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information</td>
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<td>8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property</td>
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**Table 8.1 – Performance Goal 8.0 Score Development**
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<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

Table 8.2 – Goal 8.0 Final Letter Grade
Part III – List of Documents, Exhibits, And Other Attachments

Section J

Appendix F

OPERATIONAL AGREEMENT
BETWEEN
THE OFFICE OF SCIENCE
PACIFIC NORTHWEST SITE OFFICE
AND
THE OFFICE OF ENVIRONMENTAL MANAGEMENT
RICHLAND OPERATIONS OFFICE

Revision 2
OPERATIONAL AGREEMENT  
BETWEEN  
THE OFFICE OF SCIENCE  
PACIFIC NORTHWEST SITE OFFICE  
AND  
THE OFFICE OF ENVIRONMENTAL MANAGEMENT  
RICHLAND OPERATIONS OFFICE  

<table>
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<th>REVISION</th>
<th>EFFECTIVE DATE</th>
<th>DESCRIPTION OF CHANGE</th>
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<tr>
<td>0</td>
<td>4/7/2008</td>
<td>Replaced June 29, 2005, Memorandum of Agreement. Implemented requirements of PSF construction and 300 Area Building Retention Evaluation Mitigation Plan</td>
</tr>
<tr>
<td>1</td>
<td>7/3/2013</td>
<td>Updated list of PNNL occupied 300 Area buildings, include PNNL use of the Hanford Site Process, include 300 Area electrical services provided by the City of Richland and deleted items that were completed.</td>
</tr>
<tr>
<td>2</td>
<td>TBD</td>
<td>Updated the agreement to reflect current operational changes that have occurred in the 300 area since 2013 and added clarification in regards to transportation management changes, receipt of the Final Record of Decision for the 300 Area, and property accounting. This revision also Includes Articles related to the 2015 Land Transfer.</td>
</tr>
</tbody>
</table>
OPERATIONAL AGREEMENT
BETWEEN
THE OFFICE OF SCIENCE
PACIFIC NORTHWEST SITE OFFICE
AND
THE OFFICE OF ENVIRONMENTAL MANAGEMENT
RICHLAND OPERATIONS OFFICE

Articles:

1. This Operational Agreement is entered into by the Office of Science (SC), Pacific Northwest Site Office (PNSO) and the Office of Environmental Management (EM), Richland Operations Office (RL) in order to define responsibilities and establish expectations, services and interface requirements with respect to:

   a. Pacific Northwest National Laboratory (PNNL) occupied EM facilities located in the 300 Area on the Hanford Site, Richland, Washington.
   b. EM access/use to the PNNL Site.
   c. PNNL use of EM managed land.
   d. Land transferred from RL to the Tri-City Development Council (TRIDEC)

2. This Operational Agreement supersedes the Memorandum of Agreement (MOA) entered into June 29, 2005, between PNSO and RL (Article 3.g) as well as the Operational Agreement between RL and PNSO, dated March 2008 (Article 3.a), and invokes the DOE-HQ MOA (Article 3.i) as well as the land reassignment agreements (Articles 3.f and 3.k). Additionally, this revision adds transportation requirements from DOE-HQ as well as requirements of the Final Record of Decision for the 300 Area.

3. The authority for this agreement considered the following source documents (RL letter numbers are included for reference):

   c. Deleted.
   d. DOE memorandum dated November 5, 2003 (approved by The Secretary on December 5, 2003), authorizing SC to establish PNSO (ES2003-012305).
   e. DOE memorandum dated December 9, 2003 (approved by The Secretary on January 5, 2004), authorizing SC realignment and announcement of realignment (ES2003-013451).
f. DOE memorandum dated July 14, 2004 (approved by Milt Johnson, Deputy Director for Field Operations, SC, on August 6, 2004), assigning Cognizant Secretarial Office (CSO) responsibility for the PNNL Site to SC.

g. K. A. Klein, MOA, dated June 29, 2005.

h. DOE memorandum to R. L. Orbach, Under Secretary for Science, from Clay Sell, Deputy Secretary of Energy, "Approval of Revised Alternative Selection and Cost Range (CD-1 Revised) for the Capability Replacement Laboratory (CRL) Project at PNNL," dated December 15, 2006. (Can also be located by letter 07-AMRC-0222).


l. MOA between SC and EM, dated May 24, 2007, and approved June 7, 2007, and May 25, 2007, respectively. (Can be located by letter 07-AMRC-0221). Provides basis for projected 2026 departure date from 300 Area.

m. DOE memorandum to R. L. Orbach, Under Secretary for Science, from S. W. Bodman, Secretary of Energy, "Revised Safety Functions, Responsibilities, and Authorities," dated June 22, 2007. (Can also be located by letter 08-AMRC-0016).


q. DOE Letter to Antoine Minthom, Board of Trustees, CTUIR, from R. L. Orbach and J. Rispoli, dated January 10, 2008, regarding reassignment of programmatic control of a portion of the 300 Area (Accession# DA06496613).


t. RL memorandum to J. K. Erickson, PNSO, from D. S. Shoop, dated August 1, 2014 (14-NSD-0074).

u. RL memorandum to R. E. Snyder, PNSO, from M. McCormick, "Response to Request for Approval to Utilize City of Richland as the Electrical Services Provider for the Pacific Northwest National Laboratory (PNNL) - Operated Facilities in the Hanford Site 300 Area," dated May 1, 2012 (12-AMMS-0010).
v. PNSO letter to M. Kluse, PNNL, from R. M. Kilburv. "Contract No. DEAC05-76RL01830 Approval to Utilize City of Richland as the Electrical Service Provider for the PNNL-Operated Facilities in the 300 Area," dated June 1, 2012 (12-PNSO-0244).

w. PNSO memorandum to M. S. McConnick, RL, from R. E. Snyder, "City of Richland 300 area Electrical Service Project Agreement between PNSO and RL," dated March 12, 2013 (13-PNSO-0133).

x. RL memorandum to R. E. Snyder, PNSO, from M. McCormick, "PNSO Line Management Safety Responsibility for the Electrical Utility Easement with the City of Richland (City) to Service the 300 Area at Hanford," dated September 12, 2012 (12-SSD-0102).


bb. RL memorandum to R. E. Snyder, PNSO, from D. S. Shoop, "Institutional Controls for the 300 Area", dated July 1, 2014 (14-AMRP-0027).

c. RL memorandum to M. S. McConnick, RL, from R. E. Snyder, "PNSO Line Management Safety Responsibility for the Electrical Utility Easement with the City of Richland (City) to Service the 300 Area at Hanford," dated September 12, 2012 (12-SSD-0102).


4. The PNNL Site is shown in Figure 1 consistent with Articles 3.f and 3.k, which reassign programmatic control of this land from EM to SC. The PNNL Site is a parcel of land bounded on the north by the north fence-line of a Preservation Designated Area extending east to the Columbia River and west to the east right-of-way line of Stevens Drive; then bounded on the east by the Columbia River; bounded on the south by the south right-of-way line of Hom Rapids Road except where it connects with the Environmental Molecular Sciences Laboratory (EMSL) land, and bounded on the west by the east right-of-way line of Stevens Drive. Included in the PNNL Site is the land where EMSL (Building 3020) is located south of the Hom Rapids Road.

The PNNL Site is identified in the Facility Information Management System (FIMS) as depicted in Table 1.

<table>
<thead>
<tr>
<th>Property ID</th>
<th>Property Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>DPSNTELand</td>
<td>DOE PNNL Site N-Triang!!e</td>
</tr>
<tr>
<td>DPSELand</td>
<td>DOE PNNL Site Expansion Land</td>
</tr>
</tbody>
</table>

4
The reassignment of the PNNL Site does not affect the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) activities directed by regulatory documentation. Management of CERCLA cleanup of the 300 Area will be in accordance with the 300-FF-2 and 300-FF-5 Records of Decision (see Article 3.bb.), and their associated CERCLA documentation (as interpreted by 54 FR 4100 and Operational Agreement Articles 3q and 3aa). PNSO will allow RL and its contractors' access to lands under SC programmatic control in order to carry out CERCLA responsibilities and operate and maintain utility systems serving the 300 Area.
5. The land transferred from RL to TRIDEC is shown in Figure 2 (Figure to be added upon completion of transfer agreement). The deed for transfer of this land contains covenants and restrictions to minimize or limit the impacts to PNNL Site operations resulting from development on the transferred land. PNSO/PNNL will have the lead responsibility to monitor and enforce the covenants and restrictions related to PNSO/PNNL operations.

6. SC is the Head of Contracting Activity (HCA) for the PNNL Contract and has contract oversight responsibility to ensure contractor operations are conducted in a safe, secure, and environmentally sound manner. Additionally, SC is responsible for the PNNL Site. SC has been designated the CSO for the PNNL Site. PNSO (Article 3.d) is responsible for all PNNL contractor oversight.

7. EM is the CSO for the Hanford Site, as described in Article 4, and subject to the exclusions of Article 2. RL is responsible for ensuring EM-cognizant activities are performed safely. RL maintains all authority and responsibility for the activities addressed in this agreement not within the operations of PNSO (or as otherwise described in this agreement).

8. The facility data records in FIMS for the PNNL occupied 300 Area buildings, mobile office trailers, and Other Structural Facilities (OSF) will reflect PNNL as the Site-Area, EM as the owning Program Office, and SC as the operating/mission dependent program. PNSO and its contractor will keep these facility data records current in the FIMS database. PNSO and its contractor will notify RL of modifications/betterments planned for the PNNL occupied 300 Area buildings. When the value and status of real property changes, PNSO and its contractor will provide RL the approved transfer voucher document to update the Standard Accounting and Reporting System (STARS) records. PNSO will provide RL an annual estimated property valuation Report every January. (See Reference bb. for clarification).

9. RL will be responsible for the disposition of accountable (tracked) EM personal property that is located in the 300 Area buildings occupied by PNNL. This liability is documented on the RL Financial Statement and those systems that feed it (property management system, etc.). Both EM accountable (tracked) and non-accountable (non-tracked) property to be dispositioned will be turned over to the appropriate RL contractor before or on the date the buildings are turned over. PNSO shall not relocate waste from PNNL occupied 300 Area buildings into buildings being turned over to RL unless authorized under appropriate CERCLA documentation and with RL concurrence. SC personal property will remain PNSO and its contractor's responsibility for final disposition.

10. PNSO and its contractor will be responsible for the disposition of nuclear materials located in the 300 Area buildings occupied by PNNL before or on the date the buildings are turned over. Legacy hold-up material in the buildings (ventilation, hot cells, etc.) will be transferred to the appropriate RL contractor when the buildings are turned over. Terminal cleanout negotiations will need to be completed prior to transferring facilities with hotcells, gloveboxes, and hoods to address what waste streams will need to be addressed prior to transfer to RL. Packaged waste shall be removed prior to transition of
facilities. PNSO shall not relocate waste from PNNL occupied 300 Area buildings into buildings being turned over to RL unless authorized under appropriate CERCLA documentation and with RL concurrence.

11. At the end of PNNL occupancy, PNSO will transition the PNNL occupied/operated 300 Area EM-owned facilities, listed in Table 2, to RL for demolition and cleanup, in accordance with the SC/EM MOA (Article 3.1). For most facilities, PNNL occupancy is anticipated to extend beyond 2045.

12. PNSO has been delegated the Nuclear Safety basis approval authority under 10 CFR 830 Subpart B for the Hanford Building 325 as authorized by Articles 3.o and 3.p.

13. PNSO has line management safety responsibility and oversight, including funding for maintenance, betterments, and operations for all PNNL occupied/operated 300 Area buildings identified in Table 2 and within the facility boundaries shown in Figure 1, with exception of the boiler annexes. PNSO is responsible and accountable for approval, compliance, and oversight associated with the requirements contained in 10 CFR 835, 10 CFR 850, and 10 CFR 851 in areas and facilities identified in Table 2 and for the area under easement for the City of Richland 300 Area electrical services. Roofing and ventilation systems must be in good condition of repair prior to transitioning of facilities from PNNL occupation to RL.

14. RL will provide utilities/services and necessary infrastructure to support the PNNL occupied EM facilities and SC property in the 300 Area, unless some other mutually agreed to utility/service arrangement is established. RL will interface on those Information Technology sources which share trusted relationships for risk identification on the networks and systems with support from PNSO and PNNL. RL provided utility/services will be on a cost recoverable basis using allocation methodologies compliant with Cost Accounting Standards (CAS) that are commensurate with the level of service received. Proposed allocation methodologies, resultant financial allocations, and/or mid-year changes will be reviewed and concurred on by PNSO at least 60 days prior to implementation.

15. RL will provide maintenance and snow removal only for Cypress Street and George Washington Way Extension. PNSO shall be responsible for road and parking lot maintenance and snow removal for all other areas supporting PNNL occupied facilities.

16. RL and PNSO's contractors shall update" Interface Control Document Between PNNL, WCH, Johnson Controls, and MSA for 300 Area Utility Systems and Services" included in Article 3.i., which provides for the maintenance of government owned facilities, land, and infrastructure upon relevant changes in statements of work between RL contractors. This agreement will include agreed upon physical "boundaries" for PNNL occupied facilities and defines specific roles, responsibilities, authorities, and accountabilities for the prime contractors and their subcontractors, regarding utilities, services, and general administration of government-owned land and facilities.
17. RL and PNSO agree to utilize the City of Richland electrical services for all long-term facilities and capabilities in the 300 Area and have approved the 300 Area Electrical Service Project Agreement for the transition, operation, and closeout of electrical services. (Article 3.v.) This agreement will be maintained and managed separately from this Operational Agreement. PNSO will perform line management responsibility and oversight for occupational health and safety regarding the City of Richland provided electrical utility services to the 300 Area, including oversight for its associated RL established easement. (Article 3.w, 3.x, and 3.y) PNSO's contractor will maintain the City of Richland 300 Area Electrical Services Interfaces and Responsibilities Agreement.

### Table 2: PNNL Occupied/Operated Facilities in the 300 Area

<table>
<thead>
<tr>
<th>Building Complex</th>
<th>Facility Number</th>
<th>Owner/ Property Type</th>
<th>Facility Name/ Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>325</td>
<td>325*</td>
<td>EM Building:</td>
<td>Radiochemical Processing Laboratory</td>
</tr>
<tr>
<td></td>
<td>325A</td>
<td>EM Building</td>
<td>Cesium Recovery Facility</td>
</tr>
<tr>
<td></td>
<td>325B</td>
<td>EM Building</td>
<td>Shielded Lab Annex</td>
</tr>
<tr>
<td></td>
<td>325C</td>
<td>EM Building</td>
<td>Fluorine Gas Storage</td>
</tr>
<tr>
<td></td>
<td>325D</td>
<td>EM Building</td>
<td>Maintenance Shop Addition</td>
</tr>
<tr>
<td></td>
<td>325E</td>
<td>EM Building</td>
<td>Fire Riser/Backflow Preventer Building:</td>
</tr>
<tr>
<td></td>
<td>325BA**</td>
<td>EM Building</td>
<td>Radiochemical Processing Laboratory Boiler Annex</td>
</tr>
<tr>
<td></td>
<td>325NSPad*</td>
<td>EM Other Structure</td>
<td>North Storage Pad for 325 Complex 328/328A/3714 Concrete Slabs)</td>
</tr>
<tr>
<td>331</td>
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<td>EM Building:</td>
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<td></td>
<td>331BA**</td>
<td>EM Building</td>
<td>Life Sciences Laboratory Boiler Annex</td>
</tr>
<tr>
<td></td>
<td>331P</td>
<td>SC Personal Property</td>
<td>Chemical Storage Container</td>
</tr>
<tr>
<td></td>
<td>331K</td>
<td>SC Personal Property</td>
<td>Modular Laboratory</td>
</tr>
<tr>
<td>318</td>
<td>318*</td>
<td>EM Building</td>
<td>Radiological Calibrations Laboratory</td>
</tr>
<tr>
<td></td>
<td>318B</td>
<td>EM Building</td>
<td>High Temperature Lattice Test Reactor Filter Stack (concrete pad)</td>
</tr>
<tr>
<td></td>
<td>318C</td>
<td>EM Building</td>
<td>High Temperature Lattice Test Reactor Filter Facility (concrete pad)</td>
</tr>
<tr>
<td></td>
<td>318BA**</td>
<td>EM Building</td>
<td>Radiological Calibrations Laboratory Boiler Annex</td>
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<tr>
<td></td>
<td>318TRL4*</td>
<td>EM Trailer</td>
<td>Office Trailer &lt;MO226)</td>
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<tr>
<td>350</td>
<td>350*</td>
<td>EM Building:</td>
<td>Plant Operations and Maintenance Facility</td>
</tr>
<tr>
<td></td>
<td>350A*</td>
<td>EM Building</td>
<td>Paint Shop</td>
</tr>
<tr>
<td></td>
<td>350B*</td>
<td>EM Building</td>
<td>Warehouse</td>
</tr>
<tr>
<td></td>
<td>350C*</td>
<td>EM Building</td>
<td>Storage Facility</td>
</tr>
<tr>
<td></td>
<td>350D*</td>
<td>EM Building</td>
<td>Oil Storage Facility</td>
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<tr>
<td>361</td>
<td>361</td>
<td>SC Personal Property</td>
<td>Modular Equipment Shelter</td>
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<tr>
<td>312</td>
<td>312*</td>
<td>EM Building</td>
<td>River Pump House and Monitoring Station (312/3614A)</td>
</tr>
</tbody>
</table>

*Specifically identified in FINS

*Trailer is no longer being utilized by PNNL. PNSO will formally notify RL of 318 trailer vacation.

**Boiler Annexes are RL owned/JC/ operated facilities in support of PNNL mission
18. For the portion of the PNNL Site that is annexed into the City of Richland, the City has responsibility for fire and ambulance response. RL maintains responsibility for fire and ambulance response for the un-annexed portion of the PNNL Site (3.b.).

19. PNSO will continue to receive supplementary protective force services from RL, currently at no additional cost unless changes to the security posture at the Hanford Site and PNNL warrant a new strategy. This funding strategy will be reviewed by RIJPNSO annually and RL will provide PNSO with sufficient advanced notice prior to any changes. Because both RL and PNSO's respective contractors have their own protective force, the roles, responsibilities, authorities and expectations associated with the collective protective force services are specified as follows:

   a. Pursuant to PNSO Manager's authority, PNNL will perform alarm response to national security assets housed in PNNL facilities located off the Hanford Site (i.e., PNNL facilities within the City of Richland), per alarm annunciation notification by the Hanford Patrol Operations Center (POC).

   b. Pursuant to RL Manager's authority, the RL contractor responsible for Hanford Site security will: 1) Perform alarm monitoring (of alarm points that terminate at the POC) and notifications for both national security assets housed in PNNL facilities within the City of Richland and PNNL operated facilities located in the 300 Area on the Hanford Site; 2) perform alarm response (within required timeframes) to national security assets housed in PNNL operated facilities located at the 300 Area; and, 3) support alarm response performance testing, as required, but no less than annually.

   c. RL's Hanford Site security contractor and PNNL will maintain an interface agreement outlining the details associated with the aforementioned protective force services to include a listing of alarm point locations and corresponding asset descriptions.

   d. RL and PNSO will annually review the contractor interface agreement to ensure it meets sub articles a. and b. above.

   e. Upon request, the parties agree to provide copies of their respective contractors' performance test results, post orders, and procedures in order to evaluate contractor performance.

20. RL will continue to manage the Energy Savings Performance Contract with Johnson Controls, Inc., for retained 300 Area facilities, unless some other mutually agreed to utility/service arrangement is established. PNSO and its contractor will be responsible for costs associated with steam service provided to PNSO facilities.

21. PNSO and its contractor will be responsible for energy cost and consumption data reporting, and energy conservation performance reporting for buildings, mobile office trailers and other structural facilities under the responsibility of PNSO and its contractor.

22. PNSO and its contractor will be the responsible entity for assessing, maintaining and upgrading the electric metering of its occupied/operated 300 Area buildings against the goals of the Energy Policy Act(s).
23. While on the Hanford Site, PNSO's contractor will utilize the Hanford Transportation Safety Documentation and a qualified motor carrier for transportation of freight including hazardous material, radioactive materials, and radioactive/mixed waste:

   a. The applicable RL contractor shall manage, schedule, and conduct motor carrier services.
   b. The applicable RL contractor shall maintain and operate a centralized pool of vehicles and drivers for the onsite and limited local transportation of freight including hazardous and radioactive materials at the Hanford Site.
   c. Customers of this service prepare the waste for transport including shipper/receiver agreement documents, transportation documents for packaging, transportation, and receipt by the receiving facility.
   d. RL-provided services will be on a cost recoverable basis using allocation compliant with Cost Accounting Standards that are commensurate with the level of service received.
   e. PNSO will act as the shipper of record for all PNSO-related Federal shipments that involve the Hanford Site and require road closures.
   f. PNSO will follow transportation plans for local transuranic waste shipments involving the Hanford Site, as described in Article 3.aa.

PNSO's contractor will transport nuclear material and waste in accordance with DOE packaging safety order requirements and 10 CFR 830.

24. PNSO will provide its own Defense Nuclear Facilities Safety Board Liaison.

25. For the PNNL-occupied 300 Area EM facilities, PNSO and its contractor will comply with the provisions of the Hanford Emergency Management Plan (DOE/RL-94-02) and the DOE-0223 emergency plan implementing procedures and receive service from and provide input to the applicable RL contractor. RL will develop, implement, and maintain the Hanford Site emergency management program and will provide sufficient time to coordinate key program decisions and/or policy changes with PNSO prior to implementation Emergency Planning Hazards Assessments and Hazards Surveys will be approved by PNSO, with the concurrence of RL. PNSO will provide representatives to the Hanford Site Emergency Preparedness planning and coordinating functions.

26. PNSO and PNNL shall maintain the ability to issue Hanford Site badges. The badges shall be issued and managed in accordance with the DOE directives and the approved policies and procedures established by RL. PNSO/PNNL will minimize personnel accessing the Hanford Site barricades to employees and subcontractors that have a work function north of the Wye barricade or are participating on an official tour.

27. PNSO shall, with coordination and adequate preparation, allow service-providing contractors' access to PNNL occupied buildings in the 300 Area to perform infrastructure related services. PNSO will provide right of way access to RL and its contractors to public roads traversing the PNNL Site and, with coordination and any necessary preparation, responsible infrastructure facilities located on the PNNL Site.
28. For activities in PNNL-occupied EM facilities, PNSO's contractor will submit all PNNL requests to obtain or modify any necessary licenses, approval orders, and permits, in which RL is a signatory, to RL in a timely manner for transmission to the appropriate regulator. Direct communications with external regulatory agencies in non-routine matters will be coordinated with the appropriate DOE office. Notification of emergencies and other required reporting relating to off-normal situations (e.g., spills) will be done by PNSO's contractor, and RL will be notified immediately after the emergency or other notification. Per the PNNL Contract, the contractor is required and will continue to establish and maintain routine technical interfaces with the regulators. RL regulatory, environmental, and permit services will be on a cost recoverable basis using allocation methodologies compliant with CAS that are commensurate with the level of service received.

29. PNSO and its contractor shall comply with applicable conditions and provisions of the Hanford Site Comprehensive Land Use Environmental Impact Statement, applicable National Environmental Policy Act (NEPA) supplement analysis, as well as the 300-FF-1.300-FF-2, and 300-FF-5 Final Record of Decision (as well as any amendments or Explanations of Significant Differences) and will implement them through PNSO and its contractor's policies and procedures.

30. PNSO and its contractor will operate, maintain, and be responsible for providing all needed support for PNNL-occupied EM facilities, including, but not limited to, waste management and environmental requirements for operation. PNSO and its contractor are responsible for funding any increased cost resulting from a release to the environment from SC sources during continued occupancy in the 300 Area. (Article 31.)

31. RL is responsible for payment of the Payment in Lieu of Taxes (PILT) to Benton County, Washington on the 130 acres of land reassigned to SC on August 26, 2004, and on the 220 acres of land reassigned to SC on June 8, 2007 (Article 3k. and 3.r).

32. RL and its contractor will maintain responsibility for the maintenance, repair, and funding of the reactor compartment haul road that goes through the PNNL Site. RL will coordinate planned use of the haul road with PNSO. PNSO will not authorize any utility or facility interferences that will effect operation of this haul road without first negotiating with RL.

33. RL and PNSO are independently responsible for compliance with DOE O 436.1 Departmental Sustainability, DOE O 458.1, Radiation Protection of the Public and the Environment (limited to sections listed in the BMI contract); and the National Historic Preservation Act (NHPA). PNSO and its contractor will receive service from and provide input to the appropriate RL contractor, in a timely manner at no cost to RL, for activities on the Hanford Site as follows:

   a. Provide input for the Site-wide Environmental Management System (EMS) Program Management Plan
b. Integrate their environmental permitting and regulatory compliance activities with Hanford site-wide permitting and compliance framework maintained by the appropriate RL contractor.

c. Provide appropriate and timely input to the appropriate RL contractor for regulatory required site-wide environmental reports and metrics for their facilities and activities. Note: PNNL Site data is not included in environmental data provided for Hanford Site Reporting.

d. Support the appropriate RL contractor in their site-wide environmental regulatory management roles.

e. Provide legal and regulatory required air emission and liquid effluent monitoring and collect, compile, and/or integrate air emission and liquid effluent monitoring data from facility operations and activities under their control.

f. Receive legal and regulatory required National Historic Preservation Act (NHPA), Migratory Bird Treaty Act (MBTA), and Endangered Species Act (BSA) documentation from the appropriate RL contractor for projects and facility operations if sponsored by RL (Note: NEPA documentation is prepared by PNSO and its contractor).

g. Provide appropriate environmental data for its facilities to support Hanford Site assessments and preparation of the annual Hanford Site Environmental Report. Obtain unit specific permit modifications in coordination with the appropriate RL contractor.

34. Use of the Hanford Site Land- For activities/work not already addressed by this agreement and for which PNSO and its contractor would like to conduct on the Hanford Site, PNSO's contractor will submit a completed Site Evaluation Form to RL's Mission Support Contractor. The requirements listed below will be followed when submitting/approving a proposed land-use request. These requirements are not applicable for work sponsored by RL, the DOE Office of River Protection, or their contractors. Approval for such work will be addressed through appropriate work authorization mechanisms (i.e., Work Authorization Statement, Inter-Entity Work Order process, etc.).

a. PNSO will be responsible to endorse/pre-screen its contractors' proposed activities for the purpose of identifying potential adverse impacts on the Hanford Site, as well as to provide any necessary information for disposition/mitigation of any identified adverse impacts to the following:

   i. Tri-Party Agreement commitments
   ii. Hanford Site missions or site operations
   iii. Hanford Site-wide Air Permit (Maximum Exposed Individual)
   iv. Nuclear Safety (Authorization Basis and Safety Documents)
   v. Hanford and DOE Mission initiatives
   v1. Hanford Site Comprehensive Land-Use Plan land-use map designations, definitions, policies, and implementing procedures
   vi. Ecological, cultural and natural resources
   vii. Environmental impacts (NEPA review)
ix. Occupational health and safety requirements
x. Security requirements
xi. Emergency management requirements and services
xii. Hanford Site fire management requirements and services
xiii. Infrastructure and capacities
xiv. Risk associated with onsite and use of hazardous materials and radiological sources
xv. Hanford RCRA permit

b. Upon receipt of a land-use request, RL's contractor will initiate an internal site evaluation review and transmit it for RL's review and approval. RL may deny the request if adverse impacts are identified associated with the RL cleanup mission responsibilities (River Corridor cleanup activities, Central Plateau cleanup activities, Mission Support Contract activities, or to the National Monument) or the proposed activity is otherwise determined not to be appropriate for conduct on the site. In situations where it appears the request may be denied, RL and PNSO will have the opportunity to engage in additional discussions and will include contractors as necessary.

c. Upon approval, the RL contractor will provide an approved Site Evaluation Form to PNSO and its contractor. Said approval will be contingent upon the fact that PNSO will continue to have line management responsibility for all aspects of the work including, but not limited to the following:

   i. Work authorization and budget
   ii. Ensure work on the project does not extend beyond the original scope that was approved
   iii. Comply with all applicable Hanford environmental permits, the acquisition of new permits if necessary, responsibility for any environmental impacts, etc.
   iv. Comply with the Hanford Site Comprehensive Land-Use Plan
   v. Comply with ecological and cultural resource reviews
   vi. Comply with the National Environmental Policy Act (NEPA)
   vii. Comply with the Hanford Site Emergency Preparedness program
   viii. Comply with security badging and site access
   ix. Comply with other applicable site wide requirements
   x. Comply with requirements identified through the Site Evaluation process

d. PNSO's contractor will notify the RL contractor when work on the Hanford Site has concluded and will work with RL's contractor to maintain an up-to-date list and map of PNNL activities conducted on the Hanford Site.

e. PNSO and its contractor will be responsible for ensuring the property is returned to its original state, unless otherwise agreed to. RL and its contractor may inspect the property to verify that it has been returned to the agreed-to state.
35. PNSO and its contractor shall ensure compliance with Washington State Waste Discharge Permit number ST-4511. PNSO and its contractor shall also ensure compliance with Hanford 300 Area Industrial Wastewater Permit No. CR-IU01 0 as issued by the City of Richland for PNNL occupied facilities within the 300 Area (325, 331, 318, and 350 complexes). PNSO and its contractor shall work with RL and its contractor(s) to mitigate or correct improper discharges into the system prior to the point of compliance.

36. PNSO shall reimburse RL for damages that RL is required to repair due to negligence or accident by PNSO or PNNL staff (e.g., replacement of fire hydrants or light poles damaged as part of road accident, etc.)

37. PNSO and RL have agreed that the RL Labor Standards Board (LSB) will make the determination whether PNNL Plant Force Work Reviews (PFWR) will be covered by the Davis-Bacon Act, or not. The LSB includes one representative from PNSO to serve as an LSB member.

38. Pursuant to State of Washington Revised Code (RCW) Title 51, RL is a group self-insurer for purposes of workers' compensation coverage. Under the terms of a Memorandum of Understanding with the Washington State Department of Labor and Industries (L&D. RL has agreed to perform all functions required by self-insurers in the State of Washington." RL will be responsible for account oversight, rate determination, and funds management of PNNL's Worker's Compensation (CP). RL will be responsible for account oversight and funds management of PNNL's Supplemental Pension (SUP PEN). PNNL will provide backup documentation, quarterly deposits, and maintain and provide historical WC and SUP PEN data, as requested by RL.

This Operational Agreement shall be effective upon the signature of all parties. The Operational Agreement may be modified or amended by the mutual agreement of the parties. The Operational Agreement will expire on September 30, 2018, unless otherwise extended by both parties.
PART III – List of Documents, Exhibits and Other Attachments

Section J Appendix G

RESERVED
PART III – List of Documents, Exhibits and Other Attachments

Section J

Appendix H

LIST OF APPROVED LABORATORY LAND/FACILITIES (OWNED AND LEASED)
## Section J - Appendix H

LIST OF APPROVED LABORATORY LAND/FACILITIES (OWNED AND LEASED)

(Depicted by Figures JH-1, JH-2)

<table>
<thead>
<tr>
<th>Land</th>
<th>Property ID</th>
<th>Predominant Use (FIMS Usage Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PNNL Site</td>
<td>DRLand1, DRLand2, DRLand3, DRLand4</td>
<td>Approximately 455 acres of Federally owned land (FIMS ID DRLand1, DRLand2, DRLand3, DRLand4) reserved for PNNL use located within Benton County, WA and in proximity to the Hanford Site 300 Area and the BMI Land-Richland. The PNNL Site contains 102 acres of a Preservation Designated Area (PDA), which is not available for development.¹</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Property ID</th>
<th>Predominant Use</th>
</tr>
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<tbody>
<tr>
<td>Coastal Security Institute 1</td>
<td>CSI1</td>
<td>Office</td>
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<tr>
<td>3020 Environmental Molecular Science Laboratory</td>
<td>3020EMSL</td>
<td>Applied Physics Laboratory</td>
</tr>
<tr>
<td>3400 Discovery Hall</td>
<td>3400</td>
<td>Tech Transfer/Conference Buildings</td>
</tr>
<tr>
<td>3410 Material Science &amp; Technology Laboratory</td>
<td>3410</td>
<td>Chemical Laboratory (Nuclear)</td>
</tr>
<tr>
<td>3420 Radiation Detection Laboratory</td>
<td>3420</td>
<td>Other Materials R&amp;D Test Buildings</td>
</tr>
<tr>
<td>3425 Ultra Low Background Counting Laboratory</td>
<td>3425</td>
<td>Other Materials R&amp;D Test Buildings</td>
</tr>
<tr>
<td>3430 Ultrasraccuracy Laboratory</td>
<td>3430</td>
<td>Other Materials R&amp;D Test Buildings</td>
</tr>
<tr>
<td>3440 Large Detector Laboratory</td>
<td>3440</td>
<td>Other Support Labs</td>
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<td>3455</td>
<td>Office</td>
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<td>3465 Trailer</td>
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<td>Office</td>
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<tr>
<td>3475 Laboratory Support Warehouse</td>
<td>3475</td>
<td>Programmatic General Storage</td>
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<td>3820 Systems Engineering Building</td>
<td>3820</td>
<td>Computation Laboratory</td>
</tr>
<tr>
<td>3820A Bldg Controls &amp; Diagnostics Lab</td>
<td>3820A</td>
<td>Large Scale Demonstration/Research Building</td>
</tr>
<tr>
<td>3850 General Purpose Chemistry Lab</td>
<td>3850</td>
<td>Chemistry Laboratory (non-nuclear)</td>
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<td>3860 Engineering and Analysis Bldg</td>
<td>3860</td>
<td>Office</td>
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<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Property ID</th>
<th>Predominant Use (FIMS Usage Code)</th>
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</thead>
<tbody>
<tr>
<td>350 Plant Operations &amp; Maintenance Facility</td>
<td>350</td>
<td>Maintenance Shops, General</td>
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<td>350A Paint Shop</td>
<td>350A</td>
<td>Paint Shops</td>
</tr>
<tr>
<td>350B Warehouse</td>
<td>350B</td>
<td>Pipe Fitting and Plumbing Shop</td>
</tr>
<tr>
<td>350C Storage Building</td>
<td>350C</td>
<td>General Storage</td>
</tr>
<tr>
<td>350D Oil Storage Facility</td>
<td>350D</td>
<td>Hazardous/Flammable Storage</td>
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<td>318 Radiological Calibrations Laboratory</td>
<td>318</td>
<td>Calibration Laboratory</td>
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<td>331 Life Sciences Laboratory 1</td>
<td>331</td>
<td>Biological Research Laboratory</td>
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<td>325 Radiochemical Processing Laboratory</td>
<td>325RPL</td>
<td>Chemical Laboratory (Nuclear)</td>
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<td>312 Pump Pit &amp; 3614A River Water Support</td>
<td>312</td>
<td>Pumping Stations (Non-Potable Water)</td>
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<td>385 Sanitary Water Pump House</td>
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<td>Pumping Stations (Potable Water)</td>
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<td>Evans Georgia Office</td>
<td>EVANSGA</td>
<td>Office</td>
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<tr>
<td>Port Of Pasco Airport Hangar</td>
<td>POP</td>
<td>Helicopter and Airplane Hangars</td>
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<tr>
<td>Northwest Institute for Advanced Computing</td>
<td>NIAC</td>
<td>Office</td>
</tr>
<tr>
<td>Northern Virginia Office</td>
<td>NVA</td>
<td>Office</td>
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<tr>
<td>Portland Lighting Lab</td>
<td>PLL</td>
<td>Laboratories, General (Non-Nuclear)</td>
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<tr>
<td>Virginia Tech Applied Research Corp</td>
<td>VTARC</td>
<td>Office</td>
</tr>
<tr>
<td>Research Support Warehouse</td>
<td>RSW</td>
<td>General Storage</td>
</tr>
<tr>
<td>RPMP West</td>
<td>RPMPW</td>
<td>General Storage</td>
</tr>
<tr>
<td>UW South Lake Union</td>
<td>UWSLU</td>
<td>Biological Research Lab (non-exclusive license)</td>
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<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Property ID</th>
<th>Predominant Use (FIMS Usage Code)</th>
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<tbody>
<tr>
<td>2400-2410 Stevens Office-Lab</td>
<td>2400STV</td>
<td>Applied Physics Laboratory</td>
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<td>2460STVCN Records Storage</td>
<td>2460STVCN</td>
<td>General Storage</td>
</tr>
<tr>
<td>Applied Processing Engineering Laboratory</td>
<td>APEL</td>
<td>Large Scale Demonstration/Research Building</td>
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<td>Battelle Seattle Research Center</td>
<td>BSRC</td>
<td>Office</td>
</tr>
<tr>
<td>WSU Bioproducts Science &amp; Engineering Laboratory</td>
<td>WSUBSESEL</td>
<td>Biological Research Laboratory</td>
</tr>
<tr>
<td>Biological Sciences Facility</td>
<td>BSF</td>
<td>Biological Research Laboratory</td>
</tr>
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<td>Battelle Washington Office (ILA)</td>
<td>BWO</td>
<td>Office</td>
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<tr>
<td>Facility Name</td>
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<td>Predominant Use (FIMS Usage Code)</td>
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<tr>
<td>Computational Sciences Facility</td>
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<td>Computation Laboratory</td>
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<td>Information Sciences Building 1</td>
<td>ISB1</td>
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<td>Laboratory Support Building</td>
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<tr>
<td>Guest House</td>
<td>GUESTHOUSE</td>
<td>Motel/Hotel/Lodges</td>
</tr>
<tr>
<td>Joint Global Change Research Institute-</td>
<td>JGCRI</td>
<td>Office</td>
</tr>
</tbody>
</table>
Battelle Memorial Institute (BMI)-owned land is included in this list as DOE has authorized work to be conducted at specific work locations on approximately 209 acres of this land, or it has been deemed beneficial to the operations of the Pacific Northwest National Laboratory in direct connection with and in proximity to the facilities listed herein.

<table>
<thead>
<tr>
<th>Land</th>
<th>Property ID</th>
<th>Predominant Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMI Richland Land</td>
<td>BRLand</td>
<td>Battelle Memorial Institute (BMI)-owned land is included in this list as DOE has authorized work to be conducted at specific work locations on approximately 209 acres of this land, or it has been deemed beneficial to the operations of the Pacific Northwest National Laboratory in direct connection with and in proximity to the facilities listed herein.</td>
</tr>
<tr>
<td>BMI Sequim Land</td>
<td>BSLand</td>
<td>Battelle Memorial Institute (BMI)-owned land is included in this list as DOE has authorized work to be conducted at specific work locations on 65 acres of land and 52 acres of tide lands, or it has been deemed beneficial to the operations of the Pacific Northwest National Laboratory in direct connection with and in proximity to the facilities listed herein.</td>
</tr>
<tr>
<td>Atmospheric Measurement Laboratory</td>
<td>AML</td>
<td>Physics Laboratories</td>
</tr>
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<td>Auditorium</td>
<td>AUD</td>
<td>Auditorium/Theater</td>
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<td>BIL</td>
<td>Animal Research Facility</td>
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<td>BRSW</td>
<td>General Storage</td>
</tr>
<tr>
<td>Engineering Development Laboratory</td>
<td>EDL</td>
<td>Physics Laboratories</td>
</tr>
<tr>
<td>Grounds Equipment Storage</td>
<td>GES</td>
<td>Hazardous/Flammable Storage</td>
</tr>
<tr>
<td>Life Sciences Laboratory 2</td>
<td>LSL2</td>
<td>Chemistry Laboratory (Non-Nuclear)</td>
</tr>
<tr>
<td>Chemical Storage &amp; Transfer Facility</td>
<td>LSL2A</td>
<td>Materials Handling or Processing Facilities</td>
</tr>
<tr>
<td>Facility Name</td>
<td>Property ID</td>
<td>Predominant Use (FIMS Usage Code)</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Mathematics Building</td>
<td>MATH</td>
<td>Office</td>
</tr>
<tr>
<td>Beach Office-Lab</td>
<td>MSL1</td>
<td>Biological Research Laboratory</td>
</tr>
<tr>
<td>Waste Wtr Treatment Building</td>
<td>MSL1W</td>
<td>Other Service Buildings</td>
</tr>
<tr>
<td>Biotech, Conf, Shop Building</td>
<td>MSL2</td>
<td>Biological Research Laboratory</td>
</tr>
<tr>
<td>Filter Building</td>
<td>MSL3</td>
<td>Other Service Buildings</td>
</tr>
<tr>
<td>Pumphouse</td>
<td>MSL4</td>
<td>Pumping Stations (Potable Water)</td>
</tr>
<tr>
<td>Marine Sciences Lab 5, 5A, 5B, 5C</td>
<td>MSL5ABC</td>
<td>Chemistry Laboratory (Non-Nuclear)</td>
</tr>
<tr>
<td>Chemical Engineering Laboratory</td>
<td>CEL</td>
<td>Other Chemistry Laboratory</td>
</tr>
<tr>
<td>Process Development Laboratory East</td>
<td>PDLE</td>
<td>Other Support Labs (High Bay)</td>
</tr>
<tr>
<td>Process Development Laboratory West</td>
<td>PDLW</td>
<td>Other Support Labs (High Bay)</td>
</tr>
<tr>
<td>Physical Science Laboratory</td>
<td>PSL</td>
<td>Chemistry Laboratory (Non-Nuclear)</td>
</tr>
<tr>
<td>Research Operations Building</td>
<td>ROB</td>
<td>Office</td>
</tr>
<tr>
<td>Technical Support Warehouse</td>
<td>TSW</td>
<td>General Storage</td>
</tr>
</tbody>
</table>
The Preservation Designated Area (PDA) is owned by the Office of Science, but will be managed and controlled by the Richland Operations Office (RL). All activities to be conducted on the PDA must follow Pacific Northwest Site Office (PNSO) rules, procedures and policies, but will be treated as an offsite location relative to any PNNL activities or responsibilities, unless otherwise covered in the 2019 Memorandum of Understanding (MOU) between PNSO and RL.

The Operational Agreement between the Office of Science, Pacific Northwest Site Office, and the Office of Environmental Management, Richland Operations Office (included as Appendix F of this Contract) explicitly addresses DOE-EM real property in use by PNNL which includes the facilities explicitly listed in this Appendix as well as other structural facilities supporting their operation. DOE EM-Owned Facilities in the 300 Area will be removed when no longer needed by SC and transitioned to EM in accordance with the referenced DOE-RL and PNSO Operational Agreement.

Contractor Leased Facilities are added to and removed from this list as approved Real Estate Packages, where DOE reviews terms and conditions, rates, market surveys and mission need to determine the use of this space by the Pacific Northwest National Laboratory. This establishes reimbursement for those lease costs incidental to the performance of work.

Contractor Leased Facilities are added to and removed from this list as approved Real Estate Packages, where DOE reviews terms and conditions, rates, market surveys and mission need to determine the use of this space by the Pacific Northwest National Laboratory. This establishes reimbursement for those lease costs incidental to the performance of work.

The majority of BMI-owned land and supporting site infrastructure or Other Structures and Facilities (OSF) is located in Richland, WA in proximity to the PNNL Site. The listed BMI-Richland real property excludes the Battelle Staff Association (BSA) Recreation Area, Kindercare, non-listed buildings, and other land parcels as specifically agreed to by DOE and Battelle. All other vacant Battelle-owned land parcels are provided for the beneficial use of PNNL. Use of these land parcels by PNNL is limited to those work activities as approved or authorized by DOE. Non-PNNL activities may also be authorized on the excluded Battelle-owned property, with proper authorization of Battelle. Additionally, Battelle acknowledges responsibility for non-PNNL activities that occur on Battelle owned excluded land as identified in this footnote, including appropriate postings or signage. The remaining BMI-owned land and supporting site infrastructure or Other Structures and Facilities (OSF) is located in Sequim, WA. The BMI-Sequim real property excludes the agricultural and forested areas on vacant land parcels, non-listed buildings, and other land parcels as specifically agreed to by DOE and Battelle. The inclusion of BMI-owned land into this list does not specifically address any potential costs or other liabilities by either party; it is only identified to designate authorized work locations. Supporting site infrastructure, or OSFs as defined and categorized in FIMS, include any fixed real property improvements to land that are not classified as a building or predominately housed within a building.

Battelle Memorial Institute (BMI)-owned facilities are included in this list as DOE has authorized work to be conducted at these specific locations or it has been deemed beneficial to the operations of the Pacific Northwest National Laboratory, through a series of Contracting Officer letters authorizing the reimbursement of certain costs BMI incurs in providing these facilities to the Government for its use and enjoyment. The inclusion of BMI-owned facilities into this list does not specifically address any potential costs or other liabilities by either party; it is only identified to designate authorized work locations.
Richland Map (Figure JH-1A)
Sequim Map (Figure JH-1A)
PART III – List of Documents, Exhibits and Other Attachments

Section J

Appendix I

Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property
ADVANCE AGREEMENT ON COSTS AND ASSOCIATED USE OF BATTELLE-
OWNED FACILITIES AND REAL PROPERTY

The Parties acknowledge that in consideration of the extension of Contract No. DE-AC05-76RL01830 (hereinafter referred to as “the PNNL Prime Contract”) from October 1, 2017 through September 30, 2022, it is in the best interests of both Parties to enter into this Advance Agreement (hereinafter referred to as “the Agreement”).

The Parties agree as follows:

1. Effective October 1, 2017, Battelle agrees to provide to the Department of Energy (hereinafter referred to as “DOE”) the right to acquire or lease Battelle-owned land and facilities in Richland, WA, and Sequim, WA and DOE agrees to fully exercise this right on or before September 30, 2035, subject to the availability of funds. Any agreement will, at a minimum, provide use and enjoyment of all right, title and interest for the subject parcels (See Attachment A-1 Land Maps). Each Agreement shall specifically contain the express transfer of the subject parcel at term for a mutually agreed upon amount to be negotiated after appropriate due diligence. Battelle agrees that, through the execution of this Agreement, it will receive fair and reasonable consideration for its assets. [M1089]

2. As of April 1, 2016, Battelle’s exclusive use of the facilities set forth in Attachment A-1 for its own business ceased and Battelle has no viable use for these facilities beyond the terms of the Laboratory Contract (and any extensions). As DOE is not able to assure that Battelle will remain as the operator of PNNL past 2022, DOE agrees the acceleration of depreciation of Battelle-owned facilities (as identified in Section J, Appendix H) is an allowable cost and will relieve Battelle, effective October 1, 2016, of any future obligations of investment in those facilities in exchange for transfer of ownership of such facilities to DOE on or before October 1, 2022.

3. The Parties acknowledge that several Battelle-owned facilities set forth in Attachment A-1 (the Engineering Development Laboratory (EDL), the Marine Sciences Laboratory (MSL-1/MSL-5), the Life Sciences Laboratory 2 (LSL-2), the Physical Sciences Laboratory (PSL), and the Research Technology Laboratory complex (specifically RTL520, RTL 570 and RTL 530)) are, in part, radiologically contaminated. The Parties agree that Battelle and the Government share responsibility for the radiological contamination in these Battelle-owned facilities. The Parties agree that, DOE shall assume remediation responsibility for such contamination, including control and ultimately remediation of the radiological contamination. Battelle previously agreed to share the costs for remediation of such radiological contamination by contributing 10% of the cost except as further provided in this paragraph. Radiological remediation completed while Battelle is the operator of PNNL will be without cost share by Battelle. To that end, the Parties agree to remediate the radiological contamination in LSL-2, EDL, and PSL prior to September 30, 2017. Areas not associated with DOE-approved radiological activities in MSL-1 and MSL-5 will be remediated prior to September 30, 2019, to the agreed-to condition that supports ongoing approved radiological activities in
these facilities. RTL 520, RTL 530, and RTL 570 will be demolished prior to September 30, 2020. The agreement is based on the currently known condition of these facilities and is subject to reevaluation by the Parties if conditions are later found to materially differ. The reevaluation by the Parties may allow for a mutually agreed to change in the schedule for demolition. The responsibilities and obligations set forth in this paragraph shall survive termination of this Agreement or the PNNL Prime Contract.

4. Nothing in this Agreement shall be deemed to constitute a release of Battelle from liability under the Comprehensive, Environmental, Response, Compensation, and Liability Act or any other relevant environmental law or regulation or from financial responsibility for pre-existing unknown hazardous substances that may be discovered during radiological remediation of the Battelle-owned facilities identified in paragraph 3.

5. The Parties agree that each and every obligation of the Government contained herein involving an expenditure of funds is subject to the availability of appropriated funds allocated specifically for the work agreed hereunder, or in the event of a claim, as provided by the Contract Disputes Act, if applicable. DOE will use its best efforts to obtain funds to meet all of its obligations under this Agreement. Nothing herein shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

6. The Parties also agree RTL and RTL Outbuilding Demolition is scheduled to be completed by no later than FY2020.

Battelle agrees that demolition of the following non-contaminated out buildings shall not require the complete removal of concrete floor slabs, foundations, and underground utilities: RTL 510, 540, 550, 570, 580 and 590. Remaining slabs or underground components and utilities shall be left in a safe configuration and condition as mutually agreed to by the Parties.

RTL Buildings 524 and 560 are considered to be integral to RTL 520 and as such will be demolished in addition to the demolition of RTL 520. The Parties acknowledge that RTL 530 and RTL 570 may have radiological contamination and may require a level of remediation commensurate with RTL 520.

Given the special circumstance of planned disposition, DOE agrees to continue to allow accelerated depreciation recovery (for all RTL buildings) to a net book value of $0 over the years 2016 to 2019.

The Parties acknowledge and agree that Battelle will assume all remediation responsibility for demolition of the Engineering Services Building (ESB). ESB will be removed from the PNNL prime contract no later than September 30, 2016 and will require no further federal obligation. DOE agrees that demolition of ESB shall not require removal of concrete slabs, foundations and underground utilities. Remaining slabs foundations, and utilities will be left in a safe configuration and condition as mutually agreed to by the Parties. In the event hazardous substances are discovered as part of or during remediation, Battelle is responsible to remediate the area. DOE agrees to allow the
write off of the remaining balance of the ESB backtlow preventer, which was installed in support of PNNL use.

This agreement is based on the current ly known cond iti on of these facilities and is subject to reevaluation by the Parties if conditions are later found to materially differ. The reevaluation by the Parties may allow for a mutually agreed to change in the schedule for demolition. The responsibilities and obligations set forth in this paragraph shall survive termination of this Agreement or the PNNL Prime Contract.

7. The Parties acknowledge and agree that effective October 1, 2017 the Battelle Inhalation Laboratory (BIL) building is included in the PNNL Prime Contract including the remaining net book value according to the original depreciation schedule. BIL depreciation under the contract shall be "accelerated" to be fully depreciated at the end of FY2022.

8. The Parties acknowledge that through the conduct of both Government and private work, Battelle operated two Emergency Generators (one at LSL-2 and one at EDL) supported by underground fuel storage tanks. The Parties agree that they both have benefited from the system. The Parties agree that, DOE shall assume responsibility via the PNNL contract for the underground fuel tanks and generator. This agreement is based on the presumption that there is no soil contamination and is subject to reevaluation by the Parties if conditions are later found to materially differ. The responsibilities and obligations set forth in this paragraph shall survive termination of this Agreement or the PNNL Prime Contract.

Agreed and acknowledged by the Parties as of the 10th day of , 2017

Battelle Memorial Institute

By: [Signature]

Name: David C. Evans
Title: Executive Vice President and CFO
Date: 1/24/17

U.S. Department of Energy

By: [Signature]

Name: Roger E. Snyder
Title: Manager, Pacific Northwest Site Office
Date:
Section J Appendix I – Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property

Attachment A-1 Land Maps

Richland, Washington
Section J Appendix I – Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property

Attachment A-1 Land Maps

Sequim, Washington
PART III – List of Documents, Exhibits and Other Attachments

Section J

Appendix J

RESERVED
PART III – List of Documents, Exhibits and Other Attachments

Section J

Appendix K

ADVANCE AGREEMENT ON ALLOWABLE COSTS ASSOCIATED WITH THE TRANSFER OF REAL PROPERTY
Section J – Appendix K

Advance Agreement on Allowable Costs Associated with the Transfer of Real Property

Battelle Memorial Institute ("Battelle") is selling real property interests, consisting of both land and improvements, in Richland and Sequim Washington, as described on Exhibit A (the "Property") to the United States of America, acting by and through the U.S. Department of Energy (the "DOE"), under separate agreements. The Parties agree that this Advance Agreement is only related to costs that may arise following the transfer of real property interests DOE purchases from Battelle as described in Exhibit A and associated with any potential liabilities arising out of or relating to those real property interests. The Parties agree that this Advance Agreement does not relate to costs associated with any potential liabilities arising out of or relating to real property interests that DOE does not purchase from Battelle, for whatever reason.

The Parties agree that any costs associated with claims or response actions that arise from any environmental contamination, including without limitation any release or disposal of a hazardous substance of any kind or nature, on any portion of the Property undiscovered as of the date of transfer of such portion of the Property shall be considered an allowable and reimbursable cost under DOE Contract Number DE-AC07-76RL01830 ("Contract") unless it is shown by clear and convincing evidence that the release or disposal of the environmental contamination arose solely from Battelle’s activities performed outside the scope of work for the Contract.

The Parties further agree that the costs of such claims and response actions, if determined by the above standard to be allowable costs under the Contract, are reimbursable under the “Payments and Advances” clause, and in addition, separately cognizable for payment by the DOE to Battelle under the Contract’s “Insurance--Litigation and Claims” ("ILC") clause as third party claims within the meaning of Subparagraph (d)(2) of that clause and without regard to (f)(1)(iii)(c) of the ILC clause. DOE's liability under this advance agreement is subject to the availability of appropriated funds. Nothing in this Advance Agreement shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies. Nothing in this Advanced Agreement alters the respective rights and responsibilities of the Parties with respect to environmental contamination on the Battelle Property Interests discovered as of the date of this Advanced Agreement which shall be addressed under the current terms of the Contract.
The Parties specifically agree that the terms of this Advanced Agreement shall continue to be in force and shall survive the termination or expiration of the Contract, including any close out of obligations thereunder, unless specifically provided otherwise by express written agreement of the Parties.

BATTELLE MEMORIAL INSTITUTE

[Signature]

Russell P. Austin
Name: Battelle Memorial Institute
Title: Senior Vice President, General Counsel and Secretary
UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF ENERGY

By: [Signature]

Name: Ryan W. Kilbury

Title: Contracting Officer
EXHIBIT A

Richland Parcel Map

Figure 1- Richland, WA Parcels

Richland Legal Descriptions

Parcel B (39.35 Acres)
- Property ID# 308408
- Geographic ID# 123082000001014

- THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 28 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23; THENCE S 89°38'43"W ALONG THE NORTH LINE THEREOF, 949.68 FEET; THENCE CONTINUING S 89°38' 43", 834.23 FEET; THENCE S 00°56'30"E, 70.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE N 89°38'43"E, 834.04 FEET PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE S 00°47'22"E, 1724.48 FEET; THENCE N 89°09'45"E, 21.53 FEET; THENCE S 00°51'14"E, 326.40 FEET ALONG THE NORTHERLY PROJECTION OF THE EAST LINE OF LOT 1, SHORT PLAT 3411 TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE S 89°17'32"W, 850.91 FEET ALONG SAID NORTH LINE TO THE SOUTHEAST CORNER OF LOT 1,
SHORT PLAT NO. 2561; THENCE N 00°50'27"W, 264.22 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE N 00°56'30"W, 1791.76 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 39.35 ACRES

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel C (43.48 Acres)
- Property ID# 308409
- Geographic ID# 123082000001015
- THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 28 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23; THENCE S 89°38'43"W ALONG THE NORTH LINE THEREOF, 949.68 FEET; THENCE S 00°47'22"E, E, 70.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE N 89°38'43"E, 917.18 FEET PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER TO THE WESTERLY RIGHT-OF-WAY OF GEORGE WASHINGTON WAY; THENCE S 01°24'40"E, 2045.36 FEET ALONG SAID RIGHT-OF-WAY TO THE INTERSECTION OF SAID RIGHT-OF-WAY WITH A LINE BEING THE EASTERLY PROJECTION OF THE NORTH LINE OF LOT 1 SHORT PLAT NO. 3411; THENCE S 89°17'39"W, 917.45 FEET ALONG SAID LINE TO THE MOST NORTHERLY CORNER OF SAID LOT 1; THENCE N 00°51'14"W, 326.40 FEET ALONG THE NORTHERLY PROJECTION OF THE EAST LINE OF SAID LOT 1; THENCE S 89°09'45"W, 21.53 FEET; THENCE N 00°47'22"W, 1724.48 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 43.48 ACRES

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel D (15.18 Acres)
- Property ID# 50999
- Geographic ID# 123082000003000
- THAT PORTION OF THE EAST HALF OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 28 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF THE EAST HALF OF SAID SECTION 23; THENCE S 01°25'38"E, 2115.18 FEET ALONG THE EAST LINE OF SAID NORTHWEST QUARTER; THENCE S 89°17'39"W 33.85 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF GEORGE WASHINGTON WAY AND THE TRUE POINT OF BEGINNING; (SAID POINT ALSO BEING THE EASTERLY PROJECTION OF THE NORTH LINE OF LOT 1, SHORT PLAT 3411, ACCORDING TO THE SURVEY THEREOF, RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3411, RECORDS OF BENTON COUNTY, WASHINGTON) THENCE CONTINUING S 89°17'39"W, 917.45 FEET TO THE MOST NORTHERLY CORNER OF LOT 1 OF SAID SHORT PLAT NO. 3411; THENCE S 00°51'14"E, 719.47 FEET ALONG THE EASTERLY LINE OF SAID LOT 1 TO AN ANGLE POINT IN SAID LOT 1; THENCE CONTINUING ALONG SAID LOT 1, N 89°12'31"E, 924.43 FEET TO THE WESTERLY RIGHT-OF-WAY OF GEORGE WASHINGTON WAY; THENCE N 01°24'40"W, 718.14 FEET ALONG SAID RIGHT OF WAY TO THE TRUE POINT OF BEGINNING.

CONTAINING 15.18 ACRES

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel L (5.02 Acres)

- Property ID# 308404
- Geographic ID# 114083000001001

- THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 14 TOWNSHIP 10 NORTH, RANGE 28 EAST, WILLOMETTE MERIDIAN, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 14; THENCE S 89°38'43"W, 2626.42 FEET ALONG THE SOUTH LINE THEREOF TO A POINT ON CURVE CONCAVE TO THE WEST ON THE EASTERLY RIGHT OF WAY OF STEVENS DRIVE (THE RADIUS POINT OF SAID CURVE BEARS S 86°00'50"W, 5769.65 FEET); THENCE NORTHERLY, 206.68 FEET ALONG SAID RIGHT-OF-WAY ON THE ARC OF SAID CURVE THOUGH A CENTRAL ANGLE OF 2°03'09"; THENCE CONTINUING ALONG SAID RIGHT OF WAY, N 06°02'19"W, 793.42 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF DESCRIBED IN QUIT CLAIM DEED RECORDED IN AUDITOR'S FILE NO. 2008-029628, RECORDS OF BENTON COUNTY, THENCE LEAVING SAID RIGHT-OF-WAY N 89°53'27"E, 870.25 FEET ALONG THE SOUTH LINE OF SAID DESCRIBED PARCEL TO THE WEST LINE OF THAT PARCEL OF LAND DESCRIBED IN STATUTORY WARRANTY DEED RECORDED IN AUDITOR'S FILE NO. 94-23027; THENCE S 0°44'59"E, 25.00 FEET ALONG SAID WEST LINE TO THE SOUTHWEST CORNER OF SAID PARCEL;
THENCE N 89°53'27"E, 343.82 FEET ALONG SAID SOUTH LINE TO THE TRUE POINT OF BEGINNING; THENCE S 0°44'59"E, 395.55 FEET; THENCE N 89°53'27"E 435.52 FEET; THENCE N 00°44'59"W, 523.41 FEET TO THE SOUTH LINE OF SAID PARCEL DESCRIBED IN AUDITOR'S FILE NO. 94-23027; THENCE S 89°14'37"W, 123.72 FEET ALONG SAID PARCEL; THENCE S 89°53'27"W, 66.41 FEET ALONG SAID PARCEL TO THE TRUE POINT OF BEGINNING. SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

CONTAINING 5.02 ACRES

TOGETHER WITH A STRIP OF LAND 50.00 FEET IN WIDTH FOR INGRESS AND EGRESS PURPOSES LYING NORTHERLY OF AND PARALLEL WITH THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE N 89°53'27"E, 61.5 FEET MORE OR LESS TO THE WESTERLY LINE OF INNOVATION BOULEVARD (A NON-PLATTED PRIVATE STREET) AND THE TERMINUS OF SAID DESCRIBED LINE.

Parcel N (20.79 Acres)

- Property ID# 308406
- Geographic ID# 114083000002011
- THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 14, AND THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 10 NORTH, RANGE 28 EAST, WILLAMETTE MERIDIAN, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 14; THENCE S 89°38'43"W, 2626.42 FEET ALONG THE SOUTH LINE THEREOF TO A POINT ON CURVE ON THE EASTERLY RIGHT OF WAY OF STEVENS DRIVE (THE RADIUS POINT OF SAID CURVE BEARS S 86°00'50"W, 5769.65 FEET); THENCE NORTHERLY, 206.68 FEET ALONG SAID RIGHT-OF-WAY ON THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°03'09" TO A POINT OF TANGENT; THENCE CONTINUING ALONG SAID RIGHT OF WAY, N 06°02'19"W, 1123.60 FEET TO A POINT OF CURVE CONCAVE TO THE EAST (THE RADIUS POINT OF SAID CURVE BEARS N 83°57'41"E, 5689.65 FEET); THENCE NORTHERLY, 288.50 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°54'19" TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEEDRecorded in AUDITOR’S FILE NO. 2008-029628, RECORDS OF BENTON COUNTY, AND TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE LEAVING SAID RIGHT-OF-WAY N 89°53'27"E, 919.99 FEET ALONG THE NORTH LINE OF SAID PARCEL TO THE
WEST LINE OF THAT PARCEL OF LAND DESCRIBED IN STATUTORY WARRANTY DEED RECORDED IN AUDITOR'S FILE NO. 94-23027; THENCE N 0°44'59"W, 984.69 FEET ALONG SAID WEST LINE TO THE NORTHWEST CORNER THEREOF AND THE SOUTHERLY RIGHT OF WAY OF HORN RAPIDS ROAD; THENCE S 89°32'17"W, 919.44 FEET ALONG SAID RIGHT OF WAY TO THE EASTERLY RIGHT OF WAY OF STEVENS DRIVE; THENCE S 0°19'06"E, 699.57 FEET ALONG SAID RIGHT OF WAY TO A POINT OF CURVE CONCAVE TO THE EAST (THE RADIUS POINT OF SAID CURVE BEARS N 89°40'54"E, 5689.65 FEET); THENCE SOUTHERLY, 279.54 FEET ALONG SAID RIGHT OF WAY AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°48'54" TO THE POINT OF BEGINNING.

CONTAINING 20.79 ACRES.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel S (44.02 Acres)

- Property ID# 308405
- Geographic ID# 11408300001002

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 14 AND THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 10 NORTH, RANGE 28 EAST, WILLAMETTE MERIDIAN, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 14; THENCE S 89°38'43"W, 2626.42 FEET ALONG THE SOUTH LINE THEREOF TO A POINT ON CURVE CONCAVE TO THE WEST ON THE EASTERLY RIGHT OF WAY OF STEVENS DRIVE (THE RADIUS POINT OF SAID CURVE BEARS S 86°00'50"W, 5769.65 FEET); THENCE NORTHERLY, 61.32 FEET ALONG SAID RIGHT-OF-WAY AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 00°36'32" TO THE TRUE POINT OF BEGINNING; (SAID POINT BEING HEREINAFTER REFERRED TO AS POINT "A" THENCE CONTINUING NORTHERLY 145.36 FEET ALONG SAID CURVE AND SAID RIGHT-OF-WAY THOUGH A CENTRAL ANGLE OF 01°26'37"; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N 06°02'19"W, 793.42 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF DESCRIBED IN QUIT CLAIM DEED RECORDED IN AUDITOR'S FILE NO. 2008-029628, RECORDS OF BENTON COUNTY, THENCE LEAVING SAID RIGHT-OF-WAY N 89°53'27"E, 870.25 FEET ALONG THE SOUTH LINE OF SAID DESCRIBED PARCEL TO THE WEST LINE OF THAT PARCEL OF LAND DESCRIBED IN STATUTORY WARRANTY DEED RECORDED IN AUDITOR'S FILE NO. 94-23027; THENCE S 0°44'59"E, 25.00 FEET ALONG SAID WEST LINE TO THE
SOUTHWEST CORNER OF SAID PARCEL; THENCE N 89°53'27"E, 343.82 FEET ALONG SAID SOUTH LINE; THENCE S 0°44'59"E, 395.55 FEET; THENCE N 89°53'27"E 435.52 FEET; THENCE N 00°44'59"W, 523.41 FEET TO THE SOUTH LINE OF SAID PARCEL DESCRIBED IN AUDITOR'S FILE NO. 94-23027; THENCE N 89°14'37"E, 61.53 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL; THENCE N 00°44'59"W, 1502.33 FEET ALONG THE EAST LINE OF SAID PARCEL TO THE SOUTHERLY RIGHT OF WAY OF HORN RAPIDS ROAD; THENCE N 89°32'17"E, 80.00 FEET ALONG SAID RIGHT OF WAY TO THE EAST LINE OF SAID INNOVATION BOULEVARD (SAID LINE ALSO BEING THE WEST LINE THAT TRACT OF LAND SHOWN ON RECORD SURVEY NO. 1332, 1443 AND 1591); THENCE S 00°49'49"E 2553.10 FEET ALONG THE EASTERLY LINE OF SAID INNOVATION BOULEVARD TO THE SOUTHWEST CORNER OF LOT 2, SHORT PLAT 2561, ACCORDING TO THE SURVEY THEREOF RECORDED UNDER AUDITOR'S FILE NO. 2001-008018, RECORDS OF BENTON COUNTY (SAID CORNER ALSO BEING ON THE NORTH LINE OF BATTELLE BOULEVARD, AN UNPLATTED PRIVATE STREET) THENCE S 89°38'43"W, 1709.81 FEET PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST QUARTER TO THE TRUE POINT OF BEGINNING.

CONTAINING 36.13 ACRES

TOGETHER WITH A STRIP OF LAND FOR PRIVATE STREET PURPOSES FOR BATTELLE BOULEVARD DESCRIBED AS FOLLOWS;

BEGINNING AT POINT “A” AFOREMENTIONED; THENCE N 89°38'43"E, 1709.81 FEET PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST QUARTER TO THE SOUTHWEST CORNER OF LOT 2 SHORT PLAT NO 2561 AFOREMENTIONED; THENCE N 89°08'21"E, 886.07 FEET ALONG THE SOUTH LINE OF SAID SHORT PLAT TO THE WESTERLY RIGHT-OF-WAY OF GEORGE WASHINGTON WAY; THENCE S 01°40'26"E, 54.35 FEET ALONG SAID RIGHT-OF-WAY; THENCE S 01°24'40"E, 84.59 FEET ALONG SAID RIGHT-OF-WAY; THENCE S 89°38'43"W, 2590.44 FEET TO A POINT ON CURVE ON THE EASTERLY RIGHT-OF-WAY OF STEVENS DRIVE (THE RADIUS POINT OF SAID CURVE BEARS S 86°42'36"W, 5769.65 FEET); THENCE NORTHERLY 131.44 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 01°18'19" TO THE POINT OF BEGINNING.

CONTAINING 7.89 ACRES.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.
Parcel Y (1.79 Acres)
- Property ID# 275995
- Geographic ID# 114083012561001

- SECTION 14 TOWNSHIP 10 RANGE 28 SHORT PLAT #2561 LOT 1 AF#01-008018
  CONTAINING 1.79 ACRES.

Parcel Z (5.52 Acres)
- Property ID# 275997
- Geographic ID# 114083012561003

- SECTION 14 TOWNSHIP 10 RANGE 28 SHORT PLAT #2561 LOT 3 AF#01-008018
  CONTAINING 5.52 ACRES.
Sequim Parcel Map

Figure 2- Sequim, WA Parcels

Sequim Legal Descriptions

Parcel A (16.84 Acres Land, 5.59 Acres Tideland)
- Property ID# 23783
- Geographic ID# 0330222301500000

- GOVERNMENT LOT 3 OF SECTION 22, TOWNSHIP 3O NORTH, RANGE 3 WEST W.M., CLALLAM COUNTY, WASHINGTON;
EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS:
BEGINNING AT A CORNER COMMON TO LOTS 2 AND 3 OF SECTION 22,
TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M., AND THE SOUTHEAST CORNER
OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID
SECTION 22, AND THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER
OF THE NORTHWEST QUARTER OF SAID SECTION 22, AND RUNNING
THENCE SOUTH ALONG THE BOUNDARY LINE COMMON TO SAID LOT 3
AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID
SECTION 22, A DISTANCE OF 942 FEET, MORE OR LESS, TO THE NORTHERLY
BOUNDARY OF THE WASHINGTON HARBOR ROAD, THENCE ALONG THE
NORTHERLY BOUNDARY OF SAID WASHINGTON HARBOR ROAD, A
DISTANCE OF 600 FEET, AND IN AN EASTERLY DIRECTION, THENCE
NORTHERLY ON A COURSE LAID OUT 44°20' EAST, A DISTANCE OF 98.6
FEET TO THE GOVERNMENT MEANDER LINE BETWEEN UPLAND AND
TIDELAND; THENCE GENERALLY IN A NORTWESTERLY DIRECTION
ALONG THE DIVIDING LINE BETWEEN THE UPLAND AND THE TIDELAND
TO A POINT WHERE THE GOVERNMENT MEANDER LINE INTERSECTS THE
NORTH LINE OF SAID LOT 3; THENCE WEST ALONG THE NORTH LINE OF
SAID LOT 3 TO THE POINT OF BEGINNING.

TOGETHER WITH SECOND CLASS TIDELANDS SITUATED IN FRONT OF
ADJACENT TO OR UPON THAT PORTION OF GOVERNMENT MEANDER LINE
DESCRIBED AS FOLLOWS:
COMMENCING ON MEANDER LINE AT THE SOUTHEAST CORNER OF
GOVERNMENT LOT 3, SECTION 22, TOWNSHIP 30 NORTH RANGE 3 WEST,
W.M., WHICH SAID POINT IS 46.30 CHAINS EAST OF QUARTER POST
BETWEEN SECTION 21 AND 22, SAID TOWNSHIP AND RANGE; THENCE
FOLLOWING MEANDER LINE ALONG EAST SIDE OF GOVERNMENT LOT 3 IN
A NORTHERLY DIRECTION, COURSES AND DISTANCES AS FOLLOWS:
NORTH 15° WEST 3.95 CHAINS, THENCE NORTH 4-1/2° EAST 14 CHAINS,
BEING A TOTAL OF 17.95 CHAINS.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel B (19.32 Acres Land, 1.60 Acres Tideland)
- Property ID# 23879
- Geographic ID# 033022420000000

- GOVERNMENT LOT 4 OF SECTION 22, TOWNSHIP 30 NORTH, RANGE 3 WEST,
  W.M., CLALLAM COUNTY, WASHINGTON.
TOGETHER WITH ALL TIDELANDS OF THE SECOND CLASS, AS DEFINED BY CHAPTER 255 OF THE SESSION LAWS OF 1927 IN FRONT OF, ADJACENT TO OR ABUTTING UPON THE NORTH HALF IN WIDTH OF SAID GOVERNMENT LOT 4.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel C (5.15 Acres Land)
- Property ID# 23912
- Geographic ID# 0330232400000000

- GOVERNMENT LOT 3 IN SECTION 23, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M., CLALLAM COUNTY, WASHINGTON.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel D (10.35 Acres Land)
- Property ID# 23910
- Geographic ID# 0330232300000000

- GOVERNMENT LOT 4 IN SECTION 23, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M., CLALLAM COUNTY, WASHINGTON.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel E (13.20 Acres Land)
- Property ID# 23760
- Geographic ID# 0330221406000000

- GOVERNMENT LOT 6 IN SECTION 22, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M., CLALLAM COUNTY, WASHINGTON.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel F (44.50 Acres Tideland)
- Property ID# 23911
- Geographic ID# 0330232302500000

- TIDELANDS OF THE SECOND CLASS, SUITABLE FOR THE CULTIVATION OF OYSTERS AS CONVEYED BY THE STATE OF WASHINGTON BY DEED RECORDED UNDER AUDITOR'S FILE NO. 149362, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTH MEANDER CORNER COMMON TO SECTIONS 22 AND 23, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M., THENCE ALONG THE BALANCED GOVERNMENT MEANDER LINE IN FRONT OF SAID SECTION 22, SOUTH 65°11'07" WEST 15.96 CHAINS AND NORTH 14°51'36" WEST 3.77 CHAINS; THENCE WEST 1.69 CHAINS, SOUTH 8°46'10" WEST 5.34 CHAINS, SOUTH 36°45'33" EAST 8.33 CHAINS, SOUTH 69°30'15" EAST 2.23 CHAINS, EAST 2.72 CHAINS, NORTH 65°02'57" EAST 9.00 CHAINS, NORTH 55°26'08" EAST 11.72 CHAINS, NORTH 78°20'38" EAST 2.85 CHAINS, NORTH 47°41'50" EAST 15.04 CHAINS, NORTH 66°04’ EAST 10.52 CHAINS, NORTH 74° EAST 9.00 CHAINS, NORTH 85°01’ EAST 7.03 CHAINS AND NORTH 55°54’54" EAST 3.61 CHAINS TO AN ANGLE POINT IN THE GOVERNMENT MEANDER LINE IN FRONT OF SAID SECTION 23; THENCE ALONG SAID MEANDER LINE, WEST 10.00 CHAINS, SOUTH 74° WEST 19.00 CHAINS AND SOUTH 68° WEST 25.41 CHAINS TO SAID POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO LANGDON S. SIMONS, JR., AND ANN M. SIMONS, HIS WIFE, BY DEED RECORDED UNDER AUDITOR'S FILE NO. 331425, DESCRIBED AS FOLLOWS:

THAT PORTION OF A TRACT OF TIDELANDS CONVEYED FOR THE CULTIVATION OF OYSTERS UNDER THE PROVISIONS OF CHAPTER 24, LAWS OF 1895, TO A.A. BUGGE THROUGH DEED ISSUED SEPTEMBER 21, 1932, UNDER APPLICATION NO. 9573, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH MEANDER CORNER OF THE WEST LINE OF SECTION 23, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M.; THENCE ALONG THE GOVERNMENT MEANDER LINE NORTH 68° EAST 25.41 CHAINS; THENCE NORTH 74° EAST 19.00 CHAINS TO THE TRUE POINT OF BEGINNING, THENCE EAST 10.00 CHAINS; THENCE SOUTH 55°54” WEST 3.61 CHAINS; THENCE SOUTH 85°01’ WEST 7.03 CHAINS; THENCE IN A NORTHERLY DIRECTION TO THE TRUE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

Parcel G (0.46 Acres Land)
- Property ID# 23883
- Geographic ID# 03302244000000

- TIDE AND SHORELAND OF THE SECOND CLASS DESCRIBED AS FOLLOWS: COMMENCING AT A POINT 58.57 CHAINS EAST AND 12.12 CHAINS NORTH FROM THE SECTION CORNER COMMON TO SECTIONS 21, 22, 27 AND 28, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M., THENCE EAST 17.27 CHAINS, THENCE NORTH 46°30' WEST 20.98 CHAINS; THENCE SOUTH 8°05' WEST 14.60 CHAINS TO THE PLACE OF BEGINNING, BEING A LOW TIDE ISLAND AND
TIDE LAND OF THE SECOND CLASS LOCATED IN SEQUIM BAY OPPOSITE SECTION 22 IN SAID TOWNSHIP AND RANGE.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.