

PART II – CONTRACT CLAUSES

SECTION I CONTRACT CLAUSES

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I.1 FAR 52.252-2 Clauses Incorporated By Reference (Feb 1998)

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

<https://www.acquisition.gov/far>

<https://www.energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>

I.2 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.

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.3	52.202-1	Definitions (Nov 2013)	
I.4	52.203-3	Gratuities (Apr 1984)	
I.5	52.203-5	Covenant Against Contingent Fees (May 2014)	
I.6	52.203-6	Restrictions on Subcontractor Contractor Sales to the Government (Sept 2006)	
I.7	52.203-7	Anti-Kickback Procedures (May 2014)	
I.8	52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)	
I.9	52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (May 2014)	
I.10	52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)	
I.11	52.203-13	Contractor Code of Business Ethics and Conduct (Oct 2015)	
I.12	52.203-14	Display Of Hotline Poster(s) (Oct 2015)	(b) (3) DOE IG Hotline Poster
I.13	52.203-17	Contractor Employee Whistleblower Rights And Requirement to Inform Employees of Whistleblower Rights (Apr 2014)	
I.14	52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)	
I.15	52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.16	52.204-9	Personal Identity Verification of Contractor Personnel (Jan 2011)	
I.17	52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016)	
I.18	52.204-13	System for Award Management Maintenance (Oct 2016)	
I.19	52.204-14	Service Contract Reporting Requirements (Oct 2016)	
I.20	52.204-18	Commercial and Government Entity Code Maintenance (Jul 2016)	
I.21	52.204-21	Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)	
I.22	52.204-23	Use of Products and Services of Kaspersky Lab	
I.23	52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed For Debarment (Oct 2015)	
I.24	52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013)	
I.25	52.209-10	Prohibition on Contracting With Inverted Domestic Corporations (Nov 2015)	
I.26	52.210-1	Market Research (Apr 2011)	
I.27	52.215-2	Audit and Records—Negotiation (Oct 2010)	
I.28	52.215-8	Order of Precedence—Uniform Contract Format (Oct 1997)	
I.29	52.215-11	Price Reduction for Defective Certified Cost or Pricing Data—Modifications (Aug 2011)	
I.30	52.215-13	Subcontractor Certified Cost or Pricing Data—Modifications (Oct 2010)	
I.31	52.215-14	Integrity of Unit Prices (Oct 2010)	
I.32	52.215-15	Pension Adjustments and Asset Reversions (Oct 2010)	
I.33	52.215-17	Waiver of Facilities Capital Cost of Money (Oct 1997)	
I.34	52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Jul 2005)	
I.35	52.215-19	Notification of Ownership Changes (Oct 1997)	
I.36	52.215-21	Requirements for Certified Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 2010)—Modifications Alternate III – (Oct 1997)	Excel and PDF file types. CD-ROM or other secure digital file media, as requested by the Contracting Officer
I.37	52.215-23	Limitation on Pass-Through Charges (Oct 2009)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.38	52.216-7	Allowable Cost and Payment (Jun 2013)	(a)(3) 15 th (cost invoices), 7 th (Hanford Site Benefit Plan invoices), and 15 th (fee invoices)
I.39	52.216-11	Cost Contract—No Fee (Apr 1984) <i>Applies to CLINs 0010 Transition, 0030 Hanford Site Benefit Plans, 1030 Hanford Site Benefit Plans, 2030 Hanford Site Benefit Plans, 0041 Usage Based Services Received from OHCs, 1041 Usage Based Services Received from OHCs, and 2041 Usage Based Services Received from OHCs only</i>	
I.40	52.217-8	Option to Extend Services (Nov 1999)	30 days of the contract expiration date
I.41	52.217-9	Option to Extend the Term of the Contract (Mar 2000)	(a) 30 days of the contract expiration date (c) Seven (7) years and six (6) months
I.42	52.219-6	Notice of Total Small Business Set-Aside (Nov 2011)	
I.43	52.219-8	Utilization of Small Business Concerns (Nov 2016)	
I.44	52.219-14	Limitations on Subcontracting (Jan 2017)	
I.45	52.219-28	Post-Award Small Business Program Re-Representation (Jul 2013)	
I.46	52.222-1	Notice to the Government of Labor Disputes (Feb 1997)	
I.47	52.222-2	Payment for Overtime Premiums (Jul 1990)	See Clause H.58, <i>Overtime Control Reporting</i>
I.48	52.222-3	Convict Labor (Jun 2003)	
I.49	52.222-4	Contract Work Hours and Safety Standards-Overtime Compensation (May 2014)	
I.50	52.222-6	Construction Wage Rate Requirements (May 2014) (formerly known as Davis-Bacon Act)	
I.51	52.222-7	Withholding of Funds (May 2014)	
I.52	52.222-8	Payrolls and Basic Records (May 2014)	
I.53	52.222-9	Apprentices and Trainees (Jul 2005)	
I.54	52.222-10	Compliance with Copeland Act Requirements (Feb 1988)	
I.55	52.222-11	Subcontracts (Labor Standards) (May 2014)	
I.56	52.222-12	Contract Termination—Debarment (May 2014)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.57	52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014)	
I.58	52.222-14	Disputes Concerning Labor Standards (Feb 1988)	
I.59	52.222-15	Certification of Eligibility (May 2014)	
I.60	52.222-16	Approval of Wage Rates (May 2014)	
I.61	52.222-17	Nondisplacement Of Qualified Workers (May 2014)	
I.62	52.222-21	Prohibition Of Segregated Facilities (Apr 2015)	
I.63	52.222-23	Notice Of Requirement For Affirmative Action To Ensure Equal Employment Opportunity For Construction (Feb 1999)	
I.64	52.222-24	Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)	
I.65	52.222-26	Equal Opportunity (Sep 2016)	
I.66	52.222-27	Affirmative Action Compliance Requirements For Construction (Apr 2015)	
I.67	52.222-30	Construction Wage Rate Requirements-Price Adjustment (None Or Separately Specified Method) (May 2014)	
I.68	52.222-35	Equal Opportunity For Veterans (Oct 2015)	
I.69	52.222-36	Equal Opportunity For Workers With Disabilities (Jul 2014)	
I.70	52.222-37	Employment Reports On Veterans (Feb 2016)	
I.71	52.222-40	Notification Of Employee Rights Under The National Labor Relations Act (Dec 2010)	
I.72	52.222-41	Service Contract Labor Standards (May 2014)	
I.73	52.222-42 Full Text	Statement Of Equivalent Rates For Federal Hires (May 2014)	
I.74	52.222-50	Combating Trafficking In Persons (Mar 2015)	
I.75	52.222-54	Employment Eligibility Verification (Oct 2015)	
I.76	52.222-55	Minimum Wages Under Executive Order 13658 (Dec 2015)	
I.77	52.222-62	Paid Sick Leave Under Executive Order 13706 (Jan 2017)	
I.78	52.223-2	Affirmative Procurement Of Biobased Products Under Service And Construction Contracts (Sep 2013)	
I.79	52.223-3	Hazardous Material Identification And Material Safety Data (Jan 1997) – Alternate I (Jul 1995)	(b) Offeror Fill In
I.80	52.223-5	Pollution Prevention And Right-To-Know Information (May 2011)	
I.81	52.223-6	Drug-Free Workplace (May 2001)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.82	52.223-9 Full Text	Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008)	
I.83	52.223-10	Waste Reduction Program (May 2011)	
I.84	52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016)	
I.85	52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016)	
I.86	52.223-13	Acquisition Of EPEAT-Registered Imaging Equipment (Jun 2014)	
I.87	52.223-14	Acquisition Of EPEAT-Registered Televisions (Jun 2014)	
I.88	52.223-15	Energy Efficiency In Energy-Consuming Products (Dec 2007)	
I.89	52.223-16	Acquisition of EPEAT-Registered Personal Computer Products I (Oct 2015)	
I.90	52.223-17	Affirmative Procurement Of EPA-Designated Items In Service And Construction Contracts (May 2008)	
I.91	52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving (Aug 2011)	
I.92	52.223-19	Compliance With Environmental Management Systems (May 2011)	
I.93	52.223-20	Aerosols (Jun 2016)	
I.94	52.223-21	Foams (Jun 2016)	
I.95	52.224-1	Privacy Act Notification (Apr 1984)	
I.96	52.224-2	Privacy Act (Apr 1984)	
I.97	52.224-3	Privacy Training (Jan 2017)	
I.98	52.225-1	Buy American—Supplies (May 2014)	
I.99	52.225-9	Buy American—Construction Materials (May 2014)	
I.100	52.225-13	Restrictions on Certain Foreign Purchases (June 2008)	
I.101	52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)	
I.102	52.227-1	Authorization and Consent (Dec 2007) – Alternate I (Apr 1984)	
I.103	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)	
I.104	52.227-3	Patent Indemnity (Apr 1984)	
I.105	52.227-4	Patent Indemnity—Construction Contracts (Dec 2007)	
I.106	52.228-7	Insurance—Liability to Third Persons (Mar 1996)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.107	52.232-9	Limitation on Withholding of Payments (Apr 1984)	
I.108	52.232-17	Interest (May 2014)	
I.109	52.232-18	Availability of Funds (Apr 1984)	
I.110	52.232-22	Limitation of Funds (Apr 1984)	
I.111	52.232-23	Assignment of Claims (May 2014)	
I.112	52.232-25	Prompt Payment (Jan 2017) – Alternate I (Feb 2002)	
I.113	52.232-27	Prompt Payment for Construction Contracts (Jan 2017)	
I.114	52.232-33	Payment by Electronic Funds Transfer – System for Award Management (Jul 2013)	
I.115	52.232-39	Unenforceability of Unauthorized Obligations (Jun 2013)	
I.116	52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)	
I.117	52.233-1	Disputes (May 2014) – Alternate I (Dec 1991)	
I.118	52.233-3	Protest After Award – Alternate I (Aug 1996)	
I.119	52.233-4	Applicable Law for Breach of Contract Claim (Oct 2004)	
I.120		RESERVED	
I.121	52.236-2	Differing Site Conditions (Apr 1984)	
I.122	52.236-3	Site Investigation and Conditions Affecting the Work (Apr 1984)	
I.123	52.236-5	Material and Workmanship (Apr 1984)	
I.124	52.236-7	Permits and Responsibilities (Nov 1991)	
I.125	52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Equipment (Apr 1984)	
I.126	52.236-11	Use and Possession Prior to Completion (Apr 1984)	
I.127	52.236-12	Cleaning Up (Apr 1984)	
I.128	52.236-13	Accident Prevention – Alternate I (Apr 1991)	
I.129	52.236-14	Availability and Use of Utility Services (Apr 1984)	
I.130	52.236-18	Work Oversight In The Cost-Reimbursement Construction Contracts (Apr 1984)	
I.131	52.236-19	Organization and Direction of the Work (Apr 1984)	
I.132	52.236-21	Specifications and Drawings for Construction	
I.133	52.237-2	Protection Of Government Buildings, Equipment, And Vegetation (Apr 1984)	
I.134	52.237-3	Continuity Of Services (Jan 1991)	
I.135	52.239-1	Privacy Or Security Safeguards (Aug 1996)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.136	52.242-1	Notice Of Intent To Disallow Costs (Apr 1984)	
I.137	52.242-3	Penalties for Unallowable Costs (May 2014)	
I.138	52.242-4	Certification of Final Indirect Costs (Jan 1997)	
I.139	52.242-13	Bankruptcy (July 1995)	
I.140	52.243-2	Changes—Cost-Reimbursement (Aug 1987) – Alternate I, Alternate III (Apr 1984)	
I.141	52.243-6	Change Order Accounting (Apr 1984)	
I.142	52.243-7	Notification of Changes (Jan 2017)	
I.143	52.244-2	Subcontracts (Oct 2010) – Alternate 1 (Jun 2007)	(d) The DOE Contracting Officer will issue a letter to the Contractor setting thresholds for consent to subcontract; (j) Not Applicable
I.144	52.244-5	Competition in Subcontracting (Dec 1996)	
I.145	52.244-6	Subcontracts for Commercial Items (Nov 2017)	
I.146	52.245-1	Government Property (Jan 2017), <i>as modified by DEAR 952.245-5</i>	
I.147	52.246-25	Limitation of Liability—Services (Feb 1997)	
I.148	52.247-1	Commercial Bill of Lading Notations (Feb 2006)	(a) Department of Energy (b) Department of Energy; contract No. 89303320CEM000075; the contract administration office identified in Section G.
I.149	52.247-63	Preference for U.S.-Flag Air Carriers (Jun 2003)	
I.150	52.247-67	Submission of Transportation Documents for Audit (Feb 2006)	(c) Contracting Officer identified in Section G
I.151	52.247-68	Report of Shipment (REPSHIP) (Feb 2006)	
I.152	52.248-1	Value Engineering (Oct 2010)	(m) 89303320CEM000075
I.153	52.248-3	Value Engineering—Construction (Oct 2015)	(i) 89303320CEM000075
I.154	52.249-6	Termination (Cost Reimbursement) (May 2004) Alternate I (Sep 1996) <i>Alternate I applicable to construction work</i>	
I.155	52.249-14	Excusable Delays (Apr 1984)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.156	52.250-1	Indemnification Under Public Law 85-804 – Alternate I (Apr 1984)	
I.157	52.251-1	Government Supply Sources (Apr 2012)	
I.158	52.251-2	Interagency Fleet Management System Vehicles and Related Services (Jan 1991)	
I.159	52.253-1	Computer Generated Forms (Jan 1991)	
I.160	952.202-1 Full Text	Definitions (Feb 2011)	
I.161	952.203-70 Full Text	Whistleblower Protection for Contractor Employees (Dec 2000)	
I.162	952.204-2 Full Text	Security Requirements (Aug 2016)	
I.163	952.204-75 Full Text	Public Affairs (Dec 2000)	
I.164	952.204-77 Full Text	Computer Security (Aug 2006)	
I.165	952.208-7 Full Text	Tagging of Leased Vehicles (Apr 1984)	
I.166	952.208-70 Full Text	Printing (Apr 1984)	
I.167	952.209-72 Full Text	Organizational Conflicts of Interest (Aug 2009) – Alternate I (Feb 2011)	(b)(1)(i) zero (0)
I.168	952.215-70 Full Text	Key Personnel (Dec 2000)	
I.169	952.216-7 Full Text	Allowable Cost and Payment (Feb 2011)	
I.170	952.217-70 Full Text	Acquisition of Real Property (Mar 2011)	
I.171	952.223-71 Full Text	Integration of Environment, Safety, and Health into Work Planning and Execution (Jul 2009)	
I.172	952.223-75 Full Text	Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)	
I.173	Full Text	RESERVED	
I.174	952.225-70 Full Text	Subcontracting for Nuclear Hot Cell Services (Mar 1993)	
I.175	952.225-71 Full Text	Compliance with Export Control Laws and Regulations (Nov 2015)	
I.176	952.226-74 Full Text	Displaced Employee Hiring Preference (Jun 1997)	

Table I-1. FAR and DEAR Clause References

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(d)
I.177	952.227-9 Full Text	Refund of Royalties (Apr 1984)	
I.178	952.227-11 Full Text	Patent Rights – Retention by the Contractor (Short Form) (Mar 1995)	
I.179	952.227-82 Full Text	Rights to Proposal Data (Apr 1994)	(cost data in Volume III); dated April 23, 2019
I.180	952.231-71 Full Text	Insurance—Litigation and Claims (Jul 2013)	
I.181	952.242-70 Full Text	Technical Direction (Dec 2000)	
I.182	952.245-5 Full Text	Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (Aug 2016)	
I.183	952.247-70 Full Text	Foreign Travel (Jun 2010)	
I.184	952.250-70 Full Text	Nuclear Hazards Indemnity Agreement (Aug 2016)	
I.185	952.251-70 Full Text	Contractor Employee Travel Discounts (Aug 2009)	
I.186	970.5204-3 Full Text	Access to and Ownership of Records (Oct 2014) <i>See full text version below; (b)(1) through (b)(5) are Contractor-owned records</i>	
I.187	970.5215-3 Full Text	Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Aug 2009) – Alternate II (Aug 2009)	
I.188	970.5217-1 Full Text	Strategic Partnership Projects Program (Non-DOE Funded Work) (Apr 2015)	
I.189	970.5223-1 Full Text	Integration of Environment, Safety, and Health into Work Planning and Execution (Dec 2000)	
I.190	970.5227-1 Full Text	Rights in Data—Facilities (Dec 2000)	
I.191	970.5232-6 Full Text	Strategic Partnership Project Funding Authorization (Apr 2015)	

This Contract incorporates one or more clauses, by reference, as indicated in the matrix above.

Any clauses that are included in full text are listed below and include the same Section I clause number as was used above.

I.73 FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (May 2014)

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It is not a Wage Determination

Employee Class Monetary Wage—Fringe Benefits

Table I-2. Classes of Service, Wage, and Fringe Benefits

Classifications	Grade	Equivalent Pay (In US Dollars)
Administrative Assistant	GS-7	19.82
Carpenter	WG-9	24.64
Computer Operator	GS-6	17.84
Electrician	WG-10	26.26
Engineering Technician	GS-9	24.24
Environmental Technician	GS-7	19.82
Forklift Operator	WG-5	18.09
Guard	GS-5	16.00
Heavy Equipment Operator	WG-10	26.26
HVAC	WG-10	26.26
Instrument Mechanic	WG-10	26.26
Janitor	WG-2	13.06
Laborer	WG-2	13.06
Machinist	WG-10	26.26
Motor Vehicle Operator	WG-7	21.36
Painter	WG-9	24.64
Pipefitter	WG-10	26.26
Receiving Clerk	WG-4	16.44
Secretary	GS-6	17.84
Technical Instructor	GS-7	19.82
Technical Writer	GS-9	24.24
Truck Driver	WG-8	22.99
Warehouse Specialist	WG-5	18.09
Water Treatment Operator	WG-9	24.64
Welder	WG-10	26.26
Note: The fringe benefit rate is \$4.13/hour which is in addition to the above hourly rates.		

Equivalent Federal Hire Classifications, Wages, and Benefit programs are described on the Office of Personnel Management web site at www.opm.gov.

I.82 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 post-consumer material content; and

(2) Submit this estimate to the Contracting Officer.

I.160 DEAR 952.202-1 Definitions (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 on FAR 2.101 in effect at the time the solicitation was issued, unless—

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

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

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

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

I.161 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.

I.162 DEAR 952.204-2 Security Requirements (Aug 2016)

(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. In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed testing designated positions in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.
 - (iv) 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.
 - (v) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

- (A) The date(s) each Review was conducted;
 - (B) Each entity that provided information concerning the individual;
 - (C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
 - (D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and
 - (E) The results of the test for illegal drugs.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work *or* services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come *to* the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794).
- (j) *Foreign ownership, control, or influence.*
- (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.
 - (2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
 - (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the CO 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 FOCI situation in order to avoid performance or a termination for default. The CO may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.
- (k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy *announcement*, a notification to prospective applicants that reviews, and tests for the absence of any *illegal* drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that

subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence scope- polygraph examination.

- (1) Flow down to subcontracts. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

I.163 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 CO, the Contractor must notify the CO and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.
- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the

Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

I.164 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.

I.165 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.

I.166 DEAR 952.208-70 Printing (Apr 1984)

The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a

requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 ½ by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term printing includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the Contractor shall notify the CO in writing and obtain the CO approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.
- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

I.167 DEAR 952.209-72 Organizational Conflicts of Interest (Aug 2009) – Alternate I (Feb 2011)

- (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 zero years after the completion of this contract. Furthermore, unless so directed in writing by the CO, 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 (1) 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.

(3) *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.

- (c) 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.
- (d) *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.
- (e) 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 consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I.168 DEAR 952.215-70 Key Personnel (Dec 2000)

- (a) The personnel listed below or elsewhere in this contract are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

See Section H for the list of Key Personnel.

I.169 DEAR 952.216-7 Allowable Cost and Payment (Feb 2011)

As prescribed in 916.307(a), when contracting with a commercial organization modify paragraph (a) of the clause at 48 CFR 52.216-7 by adding the phrase “as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR),” after 48 CFR subpart 31.2.

I.170 DEAR 952.217-70 Acquisition of Real Property (Mar 2011)

- (a) Notwithstanding any other provision of the contract, the prior approval of the CO 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 DOE 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.

I.171 DEAR 952.223-71 Integration of Environment, Safety, and Health into Work Planning and Execution (Jul 2009)

As prescribed in 923.7003 the clause set forth at 970.5223-1 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at a government-owned or leased facility where DOE has elected to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of the public health and safety.

I.172 DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be generated and maintained by the contractor in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management," the National Archives and Records Administration (NARA) - approved DOE Records Disposition Schedules, and shall be operated as a DOE Privacy Act system of records, in accordance with the Privacy Act.

I.173 RESERVED

I.174 DEAR 952.225-70 Subcontracting for Nuclear Hot Cell Services (Mar 1993)

- (a) *Definitions. Costs related to the decommissioning of nuclear facilities*, as used in this clause, means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission. Such costs for foreign facilities and for Department of Energy facilities are costs of decommissioning associated with the compliance with foreign regulatory requirements or the Department's own requirements.

Costs related to the storage and disposal of nuclear waste, as used in this clause, means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste.

Foreign company, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility which is not subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

Nuclear hot cell services, as used in this clause, means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation, after discharge from nuclear reactors, which are performed in specialized facilities located away from commercial nuclear power plants, generally referred to in the industry as "hot cells." Nuclear waste, as used in this clause, means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy, or in the case of foreign offers, by comparable foreign organizations.

United States company, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

- (b) In *selecting* a competitive offer for a first-tier subcontract acquisition of nuclear hot cell services, the Contractor shall -
 - (1) Consider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste; or
 - (2) Add these costs to offers of foreign companies, if —
 - (i) One or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such cost; and
 - (ii) One or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of cost in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)
- (c) *Upon* determining that no offer from a foreign firm has a reasonable chance of being selected for award, the requirements of this clause will not apply.

I.175 DEAR 952.225-71 Compliance with Export Control Laws and Regulations (Nov 2015)

- (a) The Contractor shall comply with all applicable export control laws and regulations.
- (b) The Contractor's responsibility to comply with all applicable export control 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 (42 U.S.C. 2011 *et seq.*), as amended;

- (2) The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);
 - (3) The Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 *et seq.*);
 - (4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);
 - (5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);
 - (6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);
 - (7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);
 - (8) Export Administration Regulations (EAR) (15 CFR Parts 730 through 774); and
 - (9) The regulations administered by the Office of Foreign Assets Control of the Department of the Treasury (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 regulations that implement parts of 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, export control laws and regulations apply to the controlled items.
- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.

I.176 DEAR 952.226-74 Displaced Employee Hiring Preference (Jun 1997)

- (a) *Definition. Eligible employee* means a current or former employee of a contractor or subcontractor employed at a DOE 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 DOE 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.

[62 FR 34862, June 27, 1997, as amended at 75 FR 69014, Nov 10, 2010]

I.177 DEAR 952.227-9 Refund of Royalties (Apr 1984)

- (a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
- (b) 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 in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.
- (c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
- (d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- (e) 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 the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

I.178 DEAR 952.227-11 Patent Rights—Retention by the Contractor (Short Form) (Mar 1995)

(a) Definitions.

- (1) *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.*).

- (2) *Made* when used in relation to any invention means the conception of first actual reduction to practice of such invention.
 - (3) *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.
 - (4) *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.
 - (5) *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, will be used.
 - (6) *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)) must also occur during the period of contract performance.
 - (7) *Agency licensing regulations and agency regulations concerning the licensing of Government-owned inventions* mean the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (b) *Allocation of principal rights.* 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.
- (c) *Invention disclosure, election of title, and filing of patent application by Contractor.*
- (1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). 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. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

- (2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election for the title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.
 - (3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any 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 addition countries or international patent offices within either 10 months of the corresponding initial patent application or 6 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) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c) (1), (2), and (3) of this clause may, at the discretion of the agency, be granted.
- (d) *Conditions when the Government may obtain title.* The Contractor will convey to the Federal agency, 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 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.
 - (2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, 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 reexamination or opposition proceeding on, a patent on a subject invention.
- (e) *Minimum rights to Contractor and protection of the Contractor right to file.*
- (1) The Contractor will retain a 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. The Contractor's license extends to its domestic subsidiary 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 the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
 - (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the 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 in that foreign country.

- (3) 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 30 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 agency regulations 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) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to
 - (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 paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.
- (2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under 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) The Contractor will notify DOE 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 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Contractor agrees to include, within the specification of any United States patent application 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 the United States Department of Energy. The Government has certain rights in the invention."

(g) *Subcontracts.*

- (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of

the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

- (2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.
 - (3) In the case of subcontracts, at any tier, DOE, 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.
- (h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, 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 that agency 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 supplemental regulations of the agency 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) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, 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 as the Contractor;
 - (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
 - (4) 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 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)(4).
- (l) Communications.
- (1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.
 - (2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the *Contract Disputes Act of 1978*.
 - (3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:
 - (i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

- (ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or
- (iii) A report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

I.179 DEAR 952.227-82 Rights to Proposal Data (Apr 1994)

Except for technical data contained on pages (cost data in Volume III) of the contractor's proposal dated April 23, 2019 which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

I.180 DEAR 952.231-71 Insurance—Litigation and Claims (Jul 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 limitation of cost or limitation of funds clause of this contract.

(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, judgment 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 970.31, as supplemented by 48 CFR part 931;

(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

(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.181 DEAR 952.242-70 Technical Direction (Dec 2000)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term “technical direction” is defined to include, without limitation:

- (1) Providing direction to the Contractor that redirects contract effort, shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details, or otherwise serves 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 DOE.
- (b) The Contractor will receive a copy of the written COR designation from the CO. It will specify the extent of the COR's authority to act on behalf of the CO.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
- (1) Constitutes an assignment of additional work outside the PWS.
 - (2) Constitutes a change as defined in the contract clause entitled "Changes".
 - (3) Changes 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.
 - (5) Interferes with the Contractor's right to perform to the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five 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 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 DOE 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 CO 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 in Section I, 52.233-1 "Disputes."

I.182 DEAR 952.245-5 Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (Aug 2016)

Modify FAR 52.245-1 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

I.183 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, Official Foreign Travel, or its successor in effect at the time of award.

I.184 DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (Aug 2016)

- (a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d)
 - (1) *Indemnification.* To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$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 three years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
 - (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
 - (vi) For the purposes of that determination, offsite as that term is used in 10 CFR part 840 means away from “the contract location” which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor owned- or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above—
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

- (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to

criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

- (k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

I.185 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.* The 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 General Services Administration (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.186 DEAR 970.5204-3 Access to and Ownership of Records (Oct 2014) Deviation

- (a) *Government-owned records.* Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."
- (b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause, excluding records operated and maintained in DOE Privacy Act systems of records].
- (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 nonemployee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE-3), Personnel Records of Former Contractor Employees (DOE-5), Payroll and Leave Records (DOE-13), Report of Compensation (DOE-14), Personnel Medical Records (DOE-33), Employee Assistance Program (EAP) Records (DOE-34) and Personnel Radiation Exposure Records (DOE-35).
 - (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.
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges.
 - (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 CO for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) *Applicability.* This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.
- (f) *Records maintenance and retention.* Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.
- (g) Subcontracts.
 - (1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement

processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

- (2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

I.187 DEAR 970.5215-3 Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Aug 2009) Alternate II (Aug 2009)

(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 percent nor greater than 100 percent 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 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.
- (3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or

security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

- (i) Degree of control the Contractor had over the event or incident.
 - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.
 - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
 - (iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
 - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).
 - (vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4)
- (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
 - (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.
 - (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total

amount of the earned incentive divided by the number of evaluation periods over which it was earned.

- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor “has earned” reflects any reduction made under this or any other clause of the contract.)
- (v) At the end of the contract—
 - (A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
 - (B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor “has earned” reflects any reduction made under this or any other clause of the contract.)
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract’s ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
 - (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor’s ISMS. The following performance failures or performance failures of similar import will be considered first degree.
 - (i) Type A accident (defined in DOE Order 225.1B, or successor version).
 - (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 exceedance 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 225.1B, or successor version).
 - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

- (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1-2 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.

Alternate II (AUG 2009)

- (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 percent of the total available fee amount. Such 25 percent 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.
- (1) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
 - (2) 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 percent of the total available fee amount. Such 25 percent shall include base fee, if any.

I.188 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 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.189 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.
 - (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 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.
 - (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 DOE 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 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. 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 (f) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

I.190 DEAR 970.5227-1 Rights in Data—Facilities (Dec 2000)

(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 subparagraph (e) 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 paragraph (f) 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 right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.*

(1) The Government shall have:

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

(2) The Contractor shall have:

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
 - (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.
- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) *Copyrighted Material.*

- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.
- (2) The Contractor agrees not to include in the technical data or computer software delivered under the 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 (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software 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 technical data or computer software prior to its delivery.

(d) *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 DEAR 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 or restricted computer software for their private use.
- (e) *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. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of notice)

(f) Rights in restricted computer software.

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

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

- (b) This computer software may be:

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
- (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
- (3) Reproduced for safekeeping (archives) or backup purposes;
- (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
- (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice - Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. _____ with (name of Contractor).

(End of notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."
- (g) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

I.191 DEAR 970.5232-6 Strategic Partnership Project 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.