

PART II – CONTRACT CLAUSES**SECTION I — CONTRACT CLAUSES****I-1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

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

FAR Clauses: <http://www.arnet.gov/far>

DOE Acquisition Regulation Clauses (DEAR):
<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation?OpenDocument>

I-2 NOTICE

The following Contract clauses pertinent to this section are hereby incorporated by reference:

1. FAR (48 CFR CHAPTER 1) CLAUSES

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
*52.202-1	Definitions as modified by DEAR 952.202-1 (MAR 2002)	JUL 2004
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	APR 1984
52.203-6	Restrictions on Subcontractor Sales to the Government	JUL 1995
52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	JAN 1997

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	JUN 2003
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.204-7	Central Contractor Registration	OCT 2003
52.208-8	Required Sources for Helium and Helium Usage Data	APR 2002
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	JUL 1995
52.211-5	Material Requirements	AUG 2000
52.211-15	Defense Priority Allocation Requirements	SEP 1990
52.215-8	Order of Precedence - Uniform Contract Format	OCT 1997
52.215-10	Price Reduction for Defective Cost or Pricing Data	OCT 1997
52.215-12	Subcontractor Cost or Pricing Data	OCT 1997
52.215-15	Pension Adjustments and Asset Reversions	OCT 2004
52.215-17	Waiver of Facilities Capital Cost of Money	OCT 1997
52.219-8	Utilization of Small Business Concerns	MAY 2004
52.219-9	Small Business Subcontracting Plan	JAN 2002
52.219-16	Liquidated Damages – Subcontracting Plan	JAN 1999
52-219-25	Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting	OCT 1999

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-3	Convict Labor	JUN 2003
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	SEP 2000
52.222-6	Davis-Bacon Act	FEB 1995
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	APR 2002
52.222-29	Notification of Visa Denial	JUN 2003
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	DEC 2001
52.222-36	Affirmative Action for Workers With Disabilities	JUN 1998
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	DEC 2001
52.222-39	Notification of Employees Rights Concerning Payment of Union Dues and Fees	DEC 2004
52.223-3	Hazardous Material Identification and Material Safety Data (Alternate I - JUL 1995)	JAN 1997
52.223-5	Pollution Prevention and Right-To Know Information (Alternate I - AUG 2003)	AUG 2003
52.223-6	Drug-Free Workplace	MAY 2001
52.223-7	Notice of Radioactive Materials	JAN 1997

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.223-9	Estimate of Percentage of Recovered Material Content for EPA-Designated Products	AUG 2000
52.223-10	Waste Reduction Program	AUG 2000
52.223-11	Ozone-Depleting Substances	MAY 2001
52.223-12	Refrigeration Equipment and Air Conditioners	MAY 1995
52.223-14	Toxic Chemical Release Reporting	AUG 2003
52.224-1	Privacy Act Notification	APR 1984
52.224-2	Privacy Act	APR 1984
52.225-1	Buy American Act – Supplies	JUN 2003
52.225-9	Buy American Act – Construction Materials	JAN 2005
52.225-13	Restrictions on Certain Foreign Purchases	DEC 2003
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	JUN 2000
52.227-23	Rights to Proposal Data (Technical)	JUN 1987
*52.229-8	Taxes - Foreign Cost-Reimbursement Contracts	MAR 1990
*52.229-10	State of New Mexico Gross Receipts and Compensating Tax as Modified by DEAR 970.2904-1(a)	APR 2003
52.230-2	Cost Accounting Standards	APR 1998
52.230-6	Administration of Cost Accounting Standards	NOV 1999

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.232-17	Interest	JUN 1996
52.232-18	Availability of Funds	APR 1984
52.232-23	Prohibition of Assignment of Claims	JAN 1986
52.233-1	Disputes - Alternate I (DEC 1991)	JUL 2002
52.233-3	Protest After Award (Alternate I - JUN 1985)	AUG 1996
52.233-4	Applicable Law For Breach of Contract Claim	OCT 2004
52.237-3	Continuity of Services	JAN 1991
52.242-1	Notice of Intent to Disallow Costs	APR 1984
52.242-13	Bankruptcy	JUL 1995
52.244-5	Competition in Subcontracting	DEC 1996
52.244-6	Subcontracts for Commercial Items	DEC 2004
52.247-1	Commercial Bill of Lading Notations	APR 1984
52.247-63	Preference for U.S.-Flag Air Carriers	JUN 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	APR 2003
52.247-67	Submission of Commercial Transportation Bills to the General Services Administration for Audit	JUN 1997
52.249-6	Termination (Cost-Reimbursement) as Modified by DEAR 970.4905-1(b)	MAY 2004

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.249-14	Excusable Delays	APR 1984
52.250-1	Indemnification under Public Law 85-804 (Alternate I – APR 1984)	APR 1984
52.251-1	Government Supply Sources	APR 1984
52.251-2	Interagency Fleet Management System Vehicles and Related Services	JAN 1991
52.252-6	Authorized Deviations in Clauses	APR 1984
52.253-1	Computer Generated Forms	JAN 1991

*See Clause 52.252-4, "Alterations in Contract (APR 1984)."

2. DEAR (48 CFR CHAPTER 9) CLAUSES

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
952.203-70	Whistleblower Protection for Contractor Employees	DEC 2000
952.204-2	Security	MAY 2002
952.204-70	Classification/Declassification	SEP 1997
952.204-71	Sensitive Foreign Nations Controls	APR 1994
952.204-75	Public Affairs	DEC 2000
952.208-7	Tagging of Leased Vehicles	APR 1984
952.209-72	Organizational Conflicts of Interest (Alternate I – JUL 1997)	JUN 1997
952.211-71	Priorities and Allocations (Atomic Energy)	JUN 1996

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
*952.215-70	Key Personnel	DEC 2000
952.217-70	Acquisition of Real Property	APR 1984
952.219-70	DOE Mentor-Protégé Program	MAY 2000
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	APR 1984
952.224-70	Paperwork Reduction Act	APR 1994
952.226-74	Displaced Employee Hiring Preference	JUN 1997
952.247-70	Foreign Travel	DEC 2000
952.250-70	Nuclear Hazards Indemnity Agreement	JUN 1996
952.251-70	Contractor Employee Travel Discounts	DEC 2000
*970.5203-1	Management Controls (Deviation)	DEC 2000
970.5203-2	Performance Improvement and Collaboration	DEC 2000
970.5203-3	Contractor's Organization	DEC 2000
970.5204-1	Counterintelligence	DEC 2000
970.5204-2	Laws, Regulations, and DOE Directives	DEC 2000
970.5204-3	Access to and Ownership of Records	DEC 2000
970.5208-1	Printing	DEC 2000

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
970.5215-2	Make or Buy Plan	DEC 2000
970.5215-3	Conditional Payment of Fee, Profit, and Incentives – Facility Management Contracts	JAN 2004
970.5215-4	Cost Reduction	DEC 2000
970.5215-5	Limitation on Fee	DEC 2000
970.5217-1	Work for Others Program (Non-DOE Funded Work)	JAN 2005
970.5222-1	Collective Bargaining Agreements – Management and Operating Contracts	DEC 2000
970.5222-2	Overtime Management	DEC 2000
970.5223-1	Integration of Environment, Safety, and Health Into Work Planning and Execution	DEC 2000
970.5223-2	Affirmative Procurement Program	MAR 2003
970.5223-4	Workplace Substance Abuse Programs at DOE Sites	DEC 2000
970.5223-5	DOE Motor Vehicle Fleet Fuel Efficiency	OCT 2003
970.5226-1	Diversity Plan	DEC 2000
970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	DEC 2000
970.5226-3	Community Commitment	DEC 2000
*970.5227-2	Rights in Data-Technology Transfer (ALTERNATE I DEC 2000) (DEVIATION)	DEC 2000
*970.5227-3	Technology Transfer Mission (DEVIATION)	AUG 2002

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
970.5227-4	Authorization and Consent	AUG 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	AUG 2002
970.5227-6	Patent Indemnity – Subcontracts	DEC 2000
970.5227-8	Refund of Royalties	AUG 2002
*970.5227-12	Patent Rights Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver (Alternate I – DEVIATION)	AUG 2002
970.5228-1	Insurance – Litigation and Claims	MAR 2002
970.5229-1	State and Local Taxes	DEC 2000
970.5231-4	Preexisting Conditions (Alternate I DEC 2000) (Alternate II DEC 2000)	DEC 2000
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	DEC 2000
970.5232-2	Payments and Advances (Alternate III DEC 2000)	DEC 2000
*970.5232-3	Accounts, Records, and Inspections (DEC 2000) (Deviation)	DEC 2000
970.5232-4	Obligation of Funds	DEC 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	DEC 2000
970.5232-6	Work for Others Funding Authorization	DEC 2000
970.5232-7	Financial Management System	DEC 2000
970.5232-8	Integrated Accounting	DEC 2000

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
970.5236-1	Government Facility Subcontract Approval	DEC 2000
970.5237-2	Facilities Management	DEC 2000
970.5242-1	Penalties for Unallowable Costs	DEC 2000
970.5243-1	Changes	DEC 2000
970.5244-1	Contractor Purchasing System (DEVIATION)	DEC 2000
970.5245-1	Property (Alternate I - DEC 2000)	DEC 2000

*See Clause 52.252-4, "Alterations in Contract (APR 1984)."

I-3 FAR 52.252-4 ALTERATIONS IN CONTRACT (APR 1984)

Portions of this Contract are altered as follows:

FAR 52.202-1 DEFINITIONS (JUL 2004) AS MODIFIED BY DEAR 952.202-1 (MAR 2002)

- (a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—
- (1) The solicitation, or amended solicitation, provides a different definition;
 - (2) The contracting parties agree to a different definition;
 - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.
- (c) The term Head of Agency means:
 - (1) The Secretary
 - (2) Deputy Secretary
 - (3) Under Secretaries of the Department of Energy
 - (4) Chairman, Federal Energy Regulatory Commission
- (d) The term DOE means the Department of Energy, FERC means the Federal Energy Regulatory Commission, and NNSA means the National Nuclear Security Administration.
- (e) The term Senior Procurement Executive means, for DOE:

Department of Energy - Director, Office of Procurement and Assistance Management, DOE

National Nuclear Security Administration - Administrator for Nuclear Security, NNSA; and

Federal Energy Regulatory Commission - Chairman, FERC.

FAR 52.229-8 TAXES - FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

Paragraph (a) is revised to read as follows:

- (a) Any tax or duty from which the United States Government is exempt by agreement with the Government of * *[insert name of the foreign government]*, or from which the Contractor or any subcontractor under this Contract is exempt under the laws of * *[insert name of country]*, shall not constitute an allowable cost under this Contract.

*To be specified in applicable Task Assignment(s).

**FAR 52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS TAX AND
COMPENSATING TAX (OCT 1988)**

Paragraphs (c), (f), and (g) are revised to insert "U.S. Department of Energy" in the blanks.

DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

- (a) The personnel listed below or elsewhere in this contract (see Contract Section J Appendix entitled "Key Personnel") 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, 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.

DEAR 970.5203-1 MANAGEMENT CONTROLS (DEC 2000)

Has been revised as follows:

**DEAR 970.5203-1 MANAGEMENT CONTROLS (DEC 2000)
(DEVIATION)**

- (a) (1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic activities. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and activities assigned to the contractor are properly executed; efficient and effective operations are promoted;

resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

- (2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE.
 - (3) Such systems shall be an integral part of the contractor's management activities, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.
 - (4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the contracting officer, the contractor shall supply to the contracting officer copies of the reports reflecting the status of recommendations that result from audits of business, financial, or management controls performed by its internal audit activity and any other audit activity.
- (b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

**DEAR 970.5227-2 RIGHTS IN DATA - TECHNOLOGY TRANSFER
(DEC 2000)**

Has been revised as follows:

**DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER
(DEC 2000) (ALTERNATE I) (DEC 2000) (DEVIATION)**

(a) **Definitions.**

- (1) **Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.**
- (2) **Computer software, as used in this clause, means**
 - (i) **computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and**
 - (ii) **data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.**
- (3) **Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.**
- (4) **Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (h) of this clause.**
- (5) **Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (i) of this clause.**

- (6) **Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.**
- (7) **Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.**
- (8) **Open Source Software, as used in this clause, means computer software that is distributed under a license under which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).**

(b) **Allocation of Rights.**

- (1) ***Except as may be otherwise expressly provided or directed in writing by the NNSA Patent Counsel, the Government shall have:***
 - (i) **Ownership of all technical data and computer software first produced in the performance of this Contract;**
 - (ii) **Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;**

- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"); and
 - (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.
- (2) The Contractor shall have:
- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;
 - (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation and except Restricted Data in Category C-24,

10 CFR, Part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

- (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.
- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.
- (c) Copyright (General).
- (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.
 - (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.
- (d) Copyrighted works (scientific and technical articles).

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

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following

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

- (ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

- (iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release
 - (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes,
 - (B) would not enhance the appropriate transfer or dissemination and commercialization of such data,
 - (C) would have a negative impact on U.S. industrial competitiveness,
 - (D) would prevent DOE from meeting its obligations under treaties and international agreements, or
 - (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international

agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

- (2) **DOE Review and Response to Contractor's Request.** The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefore.
- (3) **Permission for Contractor to Assert Copyright.**
 - (i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause:
 - (A) An abstract describing the software suitable for publication,
 - (B) the source code for each software program, and
 - (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the

minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

- (ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.
- (iii) For a five-year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.
- (iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

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

Notice: These data were produced by (insert name of Contractor) under Contract No. DE-AC58-05NA25946 with the Department of Energy. For (period approved by Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

- (vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license

itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65-“Appeals.”

- (vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.
 - (viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.
- (4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. **NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE.** This notice including this sentence must appear on any copies of this computer software.

- (5) A similar notice can be used for data, other than computer software, upon approval of Patent Counsel.
- (f) **OPEN SOURCE SOFTWARE.** The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source license (hereinafter referred to as "Open Source Software" or "OSS"), subject to the following:
- (1) **Obtain Program Approval.**
 - (i) The Contractor shall ensure that the DOE/NNSA Program or Programs that have provided funding to develop the software have approved the distribution of the software as OSS. A DOE/NNSA Program may provide blanket approval for all software developed with funding from that Program. If approval from a DOE/NNSA Program is not practicable, NNSA Patent Counsel may provide approval. Either the Contractor or CRADA Participant may assert copyright in OSS developed under a CRADA, which precludes marking such OSS as Protected CRADA Information.
 - (ii) If the software is developed with funding from a federal government agency other than DOE, then, authorization from the funding source shall be obtained for OSS release, if practicable. Such federal government agency may provide blanket approval for all software developed with funding from that agency. If approval from such federal government agency is not practicable, NNSA Patent Counsel may provide approval.
 - (2) **Assert Copyright in the OSS.** Once the Contractor has obtained Program approval in accordance with subparagraph (1) of this section, the Contractor may assert copyright in the software to be distributed as OSS.
 - (3) **Form DOE F 241.4 for OSS to ESTSC.** The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE/NNSA) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.
 - (4) **OSS LOG.** The Contractor must maintain a log, available for inspection by DOE, of software distributed as OSS. The log shall contain the following information:

- (i) name of the computer software (or other identifier),
 - (ii) an abstract with description or purpose of the software,
 - (iii) evidence of DOE/NNSA Program approval,
 - (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below);
 - (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered;
 - (vi) the type of OSS license used; and
 - (vii) release version of the software for OSS containing derivative works. Upon request of DOE/NNSA Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the log.
- (5) Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible via the Contractor's website, Open Source Bulletin Boards operated by third parties, ESTSC or other industry standard means.
- (6) Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose an industry standard OSS license or create a Contractor standard license. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property and/or NNSA Patent Counsel may periodically issue guidance on OSS licenses. The OSS license, must contain, at a minimum, the following provisions:
- (i) A disclaimer that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software;
 - (ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (9) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions; and

- (iii) Collection of administrative costs is allowed. However, the Contractor may not collect a royalty or other fee in excess of good faith amount for cost recovery from any licensee for the Contractor's OSS.

- (7) Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled "Technology Transfer Mission" (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.

- (8) Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews.

- (9) Determine if Trademark Protection for the OSS is Appropriate. DOE/NNSA Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the DOE/NNSA Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.

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

(11) Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is made publicly available by Contractor. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the original OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.

(g) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR, Subpart 27.4, as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of NNSA 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 NNSA Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE/NNSA.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

- (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.
- (h) **Rights in Limited Rights Data.** Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. DE-AC58-05NA25946 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:

- (1) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (2) 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;

- (3) 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;
- (4) 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
- (5) 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.

(i) **Rights in Restricted Computer Software.**

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

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No. DE-AC58-05NA25946. 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.
- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. DE-AC58-05NA25946 with (*New Contractor Name to be Inserted Here*).

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

DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002)

Has been revised as follows:

**DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002)
(DEVIATION)**

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

- (a) **Authority.**
 - (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Nevada Test Site and Satellite Facilities, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Nevada Test Site and Satellite Facilities consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a);

Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

- (2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to identifying and protecting Intellectual Property made, created, or acquired at or by the Nevada Test Site and Satellite Facilities; negotiating licensing agreements and assignments for Intellectual Property made, created, or acquired at or by the Nevada Test Site and Satellite Facilities that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory weapon production user facilities or Nevada Test Site and Satellite Facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.
- (3) Nothing in this, or any other section of this contract provides the Contractor with any property right, including the right to license, in data first produced in the performance of this contract, except as expressly provided in the contract or approved in writing by the Contracting Officer.

(b) **Definitions.**

- (1) Contractor's General Manager means the individual who has supervision over all or substantially all of the Contractor's operations at the Nevada Test Site and Satellite Facilities.
- (2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

- (3) **Cooperative Research and Development Agreement (CRADA)** means any agreement entered into between the Contractor as operator of the Nevada Test Site and Satellite Facilities, and one or more parties including at least one non-Federal party under which the Government, through its Nevada Test Site and Satellite Facilities, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Nevada Test Site and Satellite Facilities; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.
- (4) **Joint Work Statement (JWS)** means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's General Manager or designee which describes the following:
- (i) Purpose;
 - (ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;
 - (iii) Schedule for the work; and
 - (iv) Cost and resource contributions of the parties associated with the work and the schedule.
- (5) **Assignment** means any agreement by which the Contractor transfers ownership of Nevada Test Site and Satellite Facilities Intellectual Property, subject to the Government's retained rights.
- (6) **Nevada Test Site and Satellite Facilities Biological Materials** means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Nevada Test Site and Satellite Facilities employees or through the use of Nevada Test Site and Satellite Facilities research facilities.

- (7) **Nevada Test Site and Satellite Facilities Tangible Research Product** means tangible material results of research which
- (i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;
 - (ii) are not materials generally commercially available; and
 - (iii) were made under this contract by Nevada Test Site and Satellite Facilities employees or through the use of Nevada Test Site and Satellite Facilities research facilities.
- (8) **Bailment** means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Nevada Test Site and Satellite Facilities Biological Materials or Nevada Test Site and Satellite Facilities Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.
- (c) **Allowable Costs.**
- (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work for Others) of the Nevada Test Site and Satellite Facilities for that fiscal year without written approval of the contracting officer.
 - (2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance-Litigation and Claims" of this contract.

- (d) **Conflicts of Interest-Technology Transfer.** The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in Nevada Test Site and Satellite Facilities research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:
- (1) **Inform employees of and require conformance with standards of conduct and integrity in connection with research involving non-federal sponsors and, for CRADA activity, in accordance with the provisions of paragraph (n)(5) of this clause;**
 - (2) **Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;**
 - (3) **Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE/NNSA projects and programs;**
 - (4) **Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;**
 - (5) **Conduct DOE/NNSA-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;**
 - (6) **Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE/NNSA or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;**
 - (7) **Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;**

- (8) Obtain the approval of the contracting officer, prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Nevada Test Site and Satellite Facilities employee within the previous two years or to the company in which the individual is a principal;
 - (9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; and
 - (10) Notify NNSA prior to Contractor's acting in an advisory role for evaluation of a technical proposal for funding by a third party or DOE/NNSA program, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.
- (e) **Fairness of Opportunity.** In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Nevada Test Site and Satellite Facilities and by entities other than the Contractor.
- (f) **U.S. Industrial Competitiveness for Licensing and Assignments of Intellectual Property.**
- (1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, the Contractor shall give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Nevada Test Site and Satellite Facilities intellectual property where the Nevada Test Site and Satellite Facilities obtain rights during the course of the Contractor's operation of the Nevada Test Site and Satellite Facilities under this contract:
 - (i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

- (ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and
 - (B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.
- (2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.
- (3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).
- (g) **Indemnity-Product Liability.** In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.
- (h) **Disposition of Income.**

- (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Nevada Test Site and Satellite Facilities, consistent with the research and development mission and objectives of the Nevada Test Site and Satellite Facilities and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Nevada Test Site and Satellite Facilities' budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.
- (2) The Contractor shall include as a part of its annual Nevada Test Site and Satellite Facilities Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Nevada Test Site and Satellite Facilities, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.
- (3) The Contractor shall notify the contracting officer of any changes to its policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer, which changes shall be subject to the approval of the contracting officer.

- (i) **Transfer to Successor Contractor.** In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Nevada Test Site and Satellite Facilities shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Nevada Test Site and Satellite Facilities, to the successor contractor or to the Government as directed by the contracting officer.

- (j) **Technology Transfer Affecting the National Security.**
 - (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable NNSA to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE/NNSA's nuclear weapon production complex. NNSA shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and NNSA shall promptly notify the Contractor as to whether the technology is transferable.

 - (2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

 - (3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

- (k) **Records.** The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the NNSA and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer, to enable NNSA to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and NNSA and in such a format which will serve to adequately inform NNSA of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.
- (l) **Reports to Congress.** To facilitate DOE/NNSA's reporting to Congress, the Contractor is required to submit annually to NNSA a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Nevada Test Site and Satellite Facilities innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.
- (m) **Oversight and Appraisal.** The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Nevada Test Site and Satellite Facilities Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.
- (n) **Technology Transfer Through Cooperative Research and Development Agreements.** Upon approval of the contracting officer, and as provided in a DOE/NNSA approved Joint Work Statement (JWS), the General Manager, or designee, may enter into CRADAs on behalf of the DOE/NNSA subject to the requirements set forth in this paragraph. Also, under such circumstances as the DOE/NNSA considers appropriate, the DOE/NNSA may waive the following requirements associated with the submission and approval of JWS and CRADA agreements, as legislated by the 2001 National Defense Authorization Act.

- (1) **Review and Approval of CRADAs.**
 - (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's General Manager or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer, in the approval determination.
 - (ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.
 - (iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's General Manager or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.
 - (iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.
- (2) **Selection of Participants. The Contractor's General Manager or designee in deciding what CRADA to enter into shall:**
 - (i) Give special consideration to small business firms, and consortia involving small business firms;
 - (ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

- (iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and
 - (iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.
- (3) Withholding of Data.
- (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE/NNSA shall cooperate with the Contractor in protecting such data.
 - (ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE/NNSA facilities for use by DOE/NNSA or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.
 - (iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.
- (4) Work For Others and User Facility Programs.

- (i) WFO and User Facility Agreements (UFAs) are available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith, when conditions associated with the activity under the agreement can appropriately be performed under such an alternative form.
 - (ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.
 - (iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with NNSA approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE/NNSA class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.
- (5) Conflicts of Interest.
- (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:
 - (A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee-

- (1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;
 - (2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;
or
 - (B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.
 - (ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.
 - (iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.
- (o) **Technology Transfer in Other Cost-Sharing Agreements.** In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

- (p) Technology Partnership Ombudsman.
- (1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the Nevada Test Site and Satellite Facilities, and technology licensing.
 - (2) The Ombudsman shall be a senior official of the Contractor's Nevada Test Site and Satellite Facilities staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the Nevada Test Site and Satellite Facilities, shall function as such senior official.
 - (3) The duties of the Technology Partnership Ombudsman shall include:
 - (i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;
 - (ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and
 - (iii) Submitting a quarterly report, in a format provided by DOE/NNSA, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

DEAR 970.5227-12 PATENT RIGHTS MANAGEMENT AND OPERATING CONTRACTS, FOR PROFIT CONTRACTOR, ADVANCE CLASS WAVIER (AUG 2002) ALTERNATE I

Alternate I has been revised as follows:

**DEAR 970.5227-12 PATENT RIGHTS MANAGEMENT AND
OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE
CLASS WAIVER (AUG 2002) ALTERNATE 1 (DEVIATION)**

- (a) Definitions.
- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR, Part 781.
 - (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR, Part 784.
 - (3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy/National Nuclear Security Administration to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).
 - (4) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
 - (5) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 - (6) Patent Counsel means National Nuclear Security Administration (NNSA) Patent Counsel assisting the contracting activity.
 - (7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
 - (8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(9) **Weapons Related Subject Invention** means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) **Allocation of Principal Rights.**

(1) **Assignment to the Government.** Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) **Advance class waiver of Government rights to the Contractor.** DOE/NNSA may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, including weapons related subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. The Contractor does not have a right to retain title to any weapons related subject inventions prior to being granted title by NNSA under the Class Waiver. In its elections of weapons related subject inventions, the NNSA alone will make the determination that the subject invention is in fact a weapons related subject invention, and that rights to the Contractor may be granted, based on specific procedural requirements that the Contractor must meet as enumerated in the Class Waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) **Government license.** With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

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

- (iii) DOE/NNSA reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE/NNSA exceptional circumstance subject inventions.
- (6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified in the Contract Section J Appendix entitled "All In Force Bilateral Agreements." DOE/NNSA reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.
- (7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE/NNSA patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

- (8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.
- (9) Government assignment of rights in Government employees' subject inventions. If a DOE/NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE/NNSA may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE/NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE/NNSA employee.
- (c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.

 - (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE/NNSA shall be in the form of a written report and shall include:

 - (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;

- (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
- (iv) the date and identification of any publication, on sale or public use of the invention;
- (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
- (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

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

- (2) **Publication after disclosure.** After disclosure of the subject invention to the DOE/NNSA, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

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

 - (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

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

- (3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE/NNSA's written request for title, the Contractor continues to retain title in that country.
 - (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA.
 - (5) Termination of advance class waiver. DOE/NNSA may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE/NNSA, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.
- (e) Minimum Rights of the Contractor.
- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE/NNSA may grant or refuse to grant such a request by the Contractor. If DOE/NNSA grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
 - (2) Transfer of a Contractor license. DOE/NNSA shall approve any transfer of the Contractor's license in a subject invention, and DOE/NNSA may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

- (3) **Revocation or modification of a Contractor license. DOE/NNSA may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR, Part 404, and DOE/NNSA licensing regulations. DOE/NNSA may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE/NNSA may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.**
 - (4) **Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE/NNSA shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE/NNSA for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR, Part 404, and DOE/NNSA licensing regulations.**
- (f) **Contractor Action to Protect the Government's Interest.**
- (1) **Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE/NNSA all instruments necessary to accomplish the following actions:**

 - (i) **establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;**
 - (ii) **convey title in a subject invention to DOE/NNSA pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or**
 - (iii) **enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.**

- (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) Contractor procedures for reporting subject inventions to DOE/NNSA. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE/NNSA. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.
- (4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.
- (5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy/National Nuclear Security Administration. The Government has certain rights in the invention."

- (6) **Avoidance of Royalty Charges.** If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.
 - (7) **DOE/NNSA approval of assignment of rights.** Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE/NNSA.
 - (8) **Small business firm licensees.** The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
 - (9) **Contractor licensing of subject inventions.** To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.
- (g) **Subcontracts.**
- (1) **Subcontractor subject inventions.** The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

- (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.
- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.
- (4) DOE/NNSA and subcontractor contract. With respect to subcontracts at any tier, DOE/NNSA, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE/NNSA with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

- (7) **Identification of subcontractor subject inventions.** If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (h) **Reporting on Utilization of Subject Inventions.** Upon request by DOE/NNSA, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE/NNSA. Upon request by DOE/NNSA, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE/NNSA, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE/NNSA agrees not to disclose such information to persons outside the Government, to the extent permitted by law.
- (i) **Preference for United States Industry.** Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE/NNSA may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) **March-In Rights.** With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE/NNSA may, in accordance with the procedures in the DOE/NNSA patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE/NNSA has the right to grant such a license itself if DOE/NNSA determines that:

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) **Communications.** The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.
- (l) **Reports.**
- (1) **Interim reports.** Upon DOE/NNSA's request, the Contractor shall submit to DOE/NNSA, no more frequently than annually, a list of subject inventions disclosed to DOE/NNSA during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE/NNSA in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.
 - (2) **Final reports.** Upon DOE/NNSA's request, the Contractor shall submit to DOE/NNSA, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) **Facilities License.** In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility

- (1) to practice or have practiced by or for the Government at the facility, and
- (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) **Atomic Energy.**

- (1) **Pecuniary awards.** No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
- (2) **Patent Agreements.** Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) **Classified Inventions.**

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

- (2) **Transmission of classified subject matter.** If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
 - (3) **Inclusion of clause in subcontracts.** The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (p) **Examination of Records Relating to Inventions.**
- (1) **Contractor compliance.** Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
 - (2) **Unreported inventions.** If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE/NNSA, and the Contracting Officer believes the unreported invention may be a subject invention, DOE/NNSA may require the Contractor to submit to DOE/NNSA a disclosure of the invention for a determination of ownership rights.
 - (3) **Confidentiality.** Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

- (4) **Power of inspection.** With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE/NNSA, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.
- (q) **Patent Functions.** Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE/NNSA in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (r) **Educational Awards Subject to 35 U.S.C. 212.** The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.
- (s) **Annual Appraisal by Patent Counsel.** Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE/NNSA policy.
- (t) **Publication.** It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE/NNSA or the Contractor, timely notification of the release of scientific and technical publications shall be provided to the Contractor personnel responsible for patent matters. Contractor delivery of this data and information to the NNSA Patent Counsel shall be considered met if the required data and information is entered into an appropriate database of listed publications and the NNSA Patent Counsel has read only access to the database. A copy of this data and information must be made available to the Contracting Officer upon request.

- (u) Termination of Contractor's Advance Class Waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2)
- (v) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE/NNSA relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE/NNSA shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

**DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION
(ALTERNATE II) (DEC 2000)**

Has been revised as follows:

**DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION
(DEC 2000) (DEVIATION)**

- (a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause 970.5204-3, Access To and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

- (c) *Audit of subcontractors records.* The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.
- (d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access To and Ownership of Records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.
- (e) *Reports.* The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- (f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) *Subcontracts.* The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) *Comptroller General.*
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

- (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.
- (i) *Internal audit.* The contractor agrees to establish and maintain an internal audit activity and provide the following reports:
- (1) **Internal Audit Implementation Design.** Within thirty (30) days of contract award and each 5th year of contract performance or upon the exercise of any contract option or the extension of the contract, the contractor shall submit to the contracting officer an Internal Audit Implementation Design to include the overall strategy for the audit activity. The Implementation Design will describe (i) the audit activity's placement within the contractor's organization including reporting requirements; (ii) its size and the experience and educational standards of the audit staff; (iii) its relationship to the corporate parent(s) of the contractor; (iv) the standards used to audit; (v) an overall audit strategy for relevant performance period of this contract, considering particularly the method of auditing costs incurred in the performance of the contract; (vi) the intended use of external audit resources; (vii) the plan for audit, both pre-award and post-award of subcontracts; and (viii) the schedule of peer review of the internal audit activity by other DOE contractor internal audit activities.
 - (2) **Annual Audit Report.** By each January 31 of the contract performance period, the contractor shall submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year and their results.
 - (3) **Annual Audit Plan.** By each June 30 of the contract performance period, the contractor shall submit to the contracting officer an annual audit plan that reflects the activities to be undertaken during the next fiscal year. The contractor shall design the Annual Audit Plan to test the costs incurred and contractor management systems described in the internal audit design.

- (4) Contracting officer's satisfaction. The design of the internal audit activity submitted under subparagraph (1), the annual report submitted under subparagraph (2), and the annual audit plan submitted under subparagraph (3) shall be satisfactory to the contracting officer.
- (j) *Statement of Costs Incurred and Claimed.* At any time during contract performance, should the contracting officer determine that the costs incurred are unallowable to an extent to cause him or her to lose confidence in the contractor's management controls or the contractor's management systems that validate the costs incurred and claimed, the contracting officer may, in his or her sole discretion, impose conditions upon the contractor's use of the special financial institution account or use of the Statement of Costs Incurred and Claimed in whole or in part, including direction that specific types of costs be claimed by periodic vouchering. This action shall not relieve the contractor from any obligation to perform its obligations under this contract. In addition, the contracting officer may direct the contractor to pay the Government an amount equal to the unallowable costs or payments improperly made and take any other action or combination of actions provided in this contract, at law, or in equity.