Fluor IDAHO

DOE PRIME CONTRACT # DE-EM0004083
MANDATORY FLOWDOWN CLAUSES FOR SUBCONTRACTS AND PROCUREMENT
4/30/2020
FI-MF-001

CLAUSES INCORPORATED BY REFERENCE

The clauses set forth below are incorporated herein by reference and shall have the same force and effect as if printed in full text. Wherever necessary to make the context of the clauses applicable to this Contract, whether incorporated by reference or in full text, the term "Contract" shall mean this "Contract," and the terms "Government", "Contracting Officer" and equivalent phrases shall mean "Buyer," and "Buyer's Contract Administrator," respectively. Upon request Company will make the full text of the clauses available. The Contracting Officer may at any time without advance notification make changes in the prime contract. Any changes to the prime contract that requires an adjustment, the subcontractor must assert its right for adjustment under the Changes clause. Also, the full text of a clause may be accessed electronically at this email address: http://farsite.hill.af.mil

CLAUSE NUMBER	TITLE
	APPLICABLE TO ALL SUBCONTRACTS
FAR 52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)
FAR 52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)
FAR 52.222-50	COMBATTING TRAFFICKING IN PERSONS (FEB 2009)
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA
FAR 52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)
FAR 52.224-2	PRIVACY ACT (APR 1984)
FAR 52.225-1	BUY AMERICAN - SUPPLIES (MAY 2014)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2014)
FAR 52.245-1	GOVERNMENT PROPERTY (APR 2012)
DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)
DEAR 952.204-2	SECURITY REQUIREMENTS (MAR 2011)
DEAR 952.204-70	CLASSIFICATION/DECLASSIFICATION (SEP 1997)
DEAR 952.204-77	COMPUTER SECURITY (AUG 2006)
DEAR 952.208-70	PRINTING (APR 1984)
DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)
DEAR 952.217-70	ACQUISITION OF REAL PROPERTY (MAR 2011)
DEAR 952.223-78	SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)
DEAR 952.250-70	NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)
DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)
DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)

APPLICABLE TO SUBCONTRACTS EXCEEDING $250.00

DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)

APPLICABLE TO SUBCONTRACTS EXCEEDING $2,000

FAR 52.222-11	SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)

APPLICABLE TO SUBCONTRACTS EXCEEDING $2,500

FAR 52.222-41	SERVICE CONTRACT LABOR STANDARDS (MAY 2014)

APPLICABLE TO SUBCONTRACTS EXCEEDING $3,000

FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)

APPLICABLE TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
FAR 52.222-26	EQUAL OPPORTUNITY (MAR 2007)
FAR 52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)
FAR 52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELEATIONS ACT (DEC 2010)

APPLICABLE TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)

APPLICABLE TO SUBCONTRACTS EXCEEDING $30,000

FAR 52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)

APPLICABLE TO SUBCONTRACTS EXCEEDING $100,000

FAR 52.222-35	EQUAL OPPORTUNITY FOR VETERANS (JUL 2014)
FAR 52.222-37	EMPLOYMENT REPORTS ON VETERANS (JUL 2014)
DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002)
DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

APPLICABLE TO SUBCONTRACTS EXCEEDING $150,000

FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
FAR 52.203-7	ANTI-KICKBACK PROCEDURES (MAY 2014)
FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

FAR 52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)
FAR 52.215-2	AUDIT & RECORDS – NEGOTIATION (OCT 2010)
FAR 52.215-14	INTEGRITY OF UNIT PRICES (OCT 2010)
FAR 52.215-23	LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)
FAR 52.219-8	UTILIATION OF SMALL BUSINESS CONCERNS (MAY 2014)
FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (MAY 2014)

APPLICABLE TO SUBCONTRACTS EXCEEDING $500,000

DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)
DEAR 970.5226-2	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATOIN ACT FOR FISCAL YEAR 1993 (DEC 2000)

APPLICABLE TO SUBCONTRACTS EXCEEDING $650,000

FAR 52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)
FAR 52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
FAR 52.219-9	SMALL BUSINESS CONTRACTING PLAN (OCT 2014)

APPLICABLE TO SUBCONTRACTS EXCEEDING $700,000

FAR 52.230-2	COST ACCOUNTING STANDARDS (MAY 2014)

APPLICABLE TO SUBCONTRACTS EXCEEDING $750,000

FAR 52.215-13	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (OCT 2010)
FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

APPLICABLE TO SUBCONTRACTS EXCEEDING $5,000,000

FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)
FAR 52.203-14	DISPLAY OF HOTLINE POSTERS (DEC 2007)

APPLICABLE TO ALL SUBCONTRACTS

Cost-Reimbursement type contract, Fixed-price type contract, and Time-and-Materials type contract clauses to implement Section 3610 of the CARES Act

Cost Reimbursement type contract - Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state.

(a) The Contractor may submit for reimbursement and the Government (without requiring consideration but precluding additional fee) will treat as allowable (if otherwise allowable per federal regulations) the costs of paid leave (including sick leave) the Contractor or its subcontractors provide to keep employees in a ready state if--

(1) The employees: cannot perform work on a site approved by the Federal Government (including a federally-owned or leased facility or site) due to facilities closures or other restrictions; and cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID–19.

(2) The costs are incurred from January 31, 2020 through September 30, 2020.

(3) The costs do not reflect any amount exceeding an average of 40 hours per week for paid leave.

(b) Where other relief provided for by the CARES Act or any other Act would benefit the contractor or the contractor's subcontractors, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act, the contractor should evaluate the applicability of such benefits in seeking reimbursement under the contract.

(c) The Contractor must represent in any request for reimbursement--

(1) Either it: has not received, has not claimed, and will not claim any other reimbursement, including claims for reimbursement via letter of credit, for federal funds available under the CARES Act for the same purpose, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act; or if it has received, claimed, or will claim other reimbursement, that reimbursement has been reflected, or will be reflected when known, in requests for reimbursement but in no case reflected later than in its final proposal to determine allowable incurred costs.

(2) Its request reflects or will reflect as soon as known all applicable credits, including

(i) Tax credits, including credits allowed pursuant to division G of Public Law 116-127; and

(ii) Applicable credits allowed under the CARES Act, including applicable credits for loan guarantees.

(End of clause)

Fixed Price and Time and Material type contract - Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state.

(a) In any request for equitable adjustment to the price (for a fixed-price type contract) or to the hourly rates and materials cost (for a time-and-materials type contract) of this contract, the Contractor may propose and the Government (without requiring consideration but precluding additional profit) will treat--for the purpose of beginning negotiations--as allowable (if otherwise allowable per federal regulations) the incurred or estimated costs of paid leave (including sick leave) the Contractor or its subcontractors provide to keep employees in a ready state if--

(1) The employees: cannot perform work on a site approved by the Federal Government (including a federally-owned or leased facility or site) due to facilities closures or other restrictions; and cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID–19.

(2) The costs were incurred or will be incurred from January 31, 2020 through September 30, 2020.

(3) The costs do not reflect any amount exceeding an average of 40 hours per week for paid leave.

(b) Where other relief provided for by the CARES Act or any other Act would benefit the contractor or the contractor's subcontractors, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act, the contractor should evaluate applicability of such benefits in seeking reimbursement under the contract.

(c) The Contractor must represent in any request for reimbursement--

(1) Either: it has not received, has not claimed, and will not claim any other reimbursement for federal funds available under the CARES Act for the same purpose, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act; or if it has received, claimed, or will claim other reimbursement, that reimbursement or an estimate of it has been reflected in the request for equitable adjustment.

(2) Its request reflects all applicable credits (estimated if necessary), including

(i) Tax credits, including credits allowed pursuant to division G of Public Law 116-127; and

(ii) Applicable credits allowed under the CARES Act, including applicable credits for loan guarantees.

(d) The Government's treating--for the purpose of beginning negotiations--the costs as allowable, does not mean the Government--in determining the amount of the equitable adjustment is fair and reasonable--will agree to the Contactor's proposed adjustment to the price or to the hourly rates and materials costs.

(End of clause)

FAR 52.222-99 ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS (DEVIATION 2014-O0017) (OCT 2014)

This clause implements Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and OMB Policy Memorandum M-14-09,

Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors dated June 12, 2014.

(a) Each service employee, laborer, or mechanic employed in the United States (the 50 States and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be $10.10 per hour.

(b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a) (ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a) (ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(c) The Contracting Officer will adjust the contract price or contract unit prices under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Contracting Officer shall consider documentation as to the specific costs and workers impacted in determining the amount of the adjustment.

(d) The Contractor Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in all subcontracts.

FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

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

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b),

(c), and (d) and 40 CFR Part 82, Subpart E, as follows: Warning: Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

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

FAR 52.225-11 BUY AMERICAN – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

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

"Caribbean Basin country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago). Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic: or

(ii) The construction material is a COTS item.

"Free Trade Agreement country construction material means" a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new transformed.

"Foreign construction material" means a construction material other than a domestic construction material.

"Least developed country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials*.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.50-5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: none.

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Statute.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

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

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

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

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

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (dollars) *
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]

[*Include other applicable supporting information*]

[** Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of Clause)

CONTRACTOR REQUIREMENTS DOCUMENT, DOE O 442.1B DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM

Pursuant to the Contractor Requirements Document, DOE Order 442.1B, Department of Energy Employee Concerns Program (ECP):

1. Subcontractor employees have the right and responsibility to raise any employee concern related, but not limited to, the environment, safety, health, security, quality, and management of DOE facilities and operations, as well as harassment, intimidation, retaliation/reprisal, or discrimination, to the contractor's ECP or the Department of Energy's (DOE) ECP.

2. Subcontractor employees shall cooperate with the Contractor's ECP Manager and/or DOE ECP Manager and his/her representatives in the processing of employee concerns that are submitted to the Contractor/DOE ECP. This includes, but is not limited to making pertinent information, including relevant documentation, available to the Contractor/DOE ECP Manager and his/her representatives, as necessary to address the submitted concern.

This requirement shall be flowed down to all subcontractor tiers.

(End of Clause)

DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014)

(a) *Government-owned records.* Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, ''Records Management.'' The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 ''Privacy Act.''

(b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and nonemployee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE–3), Personnel Records of Former Contractor Employees (DOE– 5), Payroll and Leave Records (DOE–13), Report of Compensation (DOE–14), Personnel Medical Records (DOE–33), Employee Assistance Program (EAP) Records (DOE–34) and Personnel Radiation Exposure Records (DOE–35).

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232–3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) *Contract completion or termination.* Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned

records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(e) *Applicability.* This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) *Records maintenance and retention.* Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, ‘‘Records Management’’ and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) *Subcontracts.* The contractor shall include the requirements of this clause in all subcontracts that contain the *Integration of Environment, Safety and Health into Work Planning and Execution* clause at 952.223–71 or, the *Radiation Protection and Nuclear Criticality* clause at 952.223–72.

(End of Clause)

RIGHTS IN DATA – FACILITIES

This clause applies 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 re managed or operated under contract with the Department of Energy (DOE).

(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 Subcontract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:
(i) Ownership of all technical data and computer software first produced in the performance of this Subcontract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Subcontract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Strategic Partnership Projects Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Subcontract at all reasonable times. The Subcontractor 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 Subcontract delivered to the Government or otherwise disposed of by the Subcontractor, either as the DOE Contracting Officer or Company purchasing representative may from time to time direct during the progress of the work or in any event as the DOE Contracting Officer or Company Purchasing Representative shall direct upon completion or termination of this Subcontract. The Subcontractor 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 or Company such data upon request by the DOE Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause (“Rights in Limited Rights Data”) or paragraph (f) of this clause (“Rights in Restricted Computer Software”); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Subcontract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Subcontractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Company of the action taken.

(2) The Subcontractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Subcontract, data it first produces in the performance of this Subcontract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Subcontract have been met as of the date of the private use of such data.

(3) The Subcontractor 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, Company, or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Subcontract which is authorized to be marked by DOE, the Subcontractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

(1) The Subcontractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this Subcontract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Subcontractor.

(2) The Subcontractor agrees not to include in the technical data or computer software delivered under the Subcontract any material copyrighted by the Subcontractor 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 and Company of the same scope as set forth in paragraph (c)(1) of this clause. If the Subcontractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Subcontractor shall obtain the written authorization of the DOE Contracting Officer to include such material in the technical data or computer software prior to its delivery.

(d) Lower-tier Subcontracting.

(1) Unless otherwise directed by the Company, with written concurrence from the DOE Contracting Officer, the Subcontractor agrees to use in lower-tier subcontracts in which technical data or computer software is expected to be produced or in lower-tier subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, “Rights in Data-General” at 48 CFR 52.227-14

modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Subcontractor shall not acquire rights in a lower-tier subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in lower-tier subcontracts in accordance with DEAR 927.409(h). The Subcontractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in lower-tier subcontracts, including lower-tier 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 Subcontract with the Company.

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

(i) Promptly submit written notice to the Company setting forth reasons or the lower-tier subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the lower-tier subcontract without the written authorization of the Company, with DOE Contracting Officer written concurrence.

(3) Neither the Subcontractor nor Lower-tier Subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data. Except as may be otherwise specified in this Subcontract as data which are not subject to this paragraph, the Subcontractor 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 Subcontractor specifically used in the performance of this Subcontract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Subcontractor at the time of initial delivery to the Government or Company, such data shall not be used within or outside the Government or Company except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

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

(a) Use (except for manufacture) by support services contractors or subcontractors within the scope of their contracts or subcontracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors or subcontractors participating in the Government's program of which this Subcontract is a part for information or use (except for manufacture) in connection with the work performed under their contracts or subcontracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

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

(End of clause)

RIGHTS IN DATA – GENERAL

This clause applies in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that require the production or delivery of data.

(a) Definitions

(1) Computer databases, as used in this Article, 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 Article, means:

(i) computer programs that 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 databases.

(3) Data, as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this Article, the term does not include data incidental to the administration of this Subcontract, such as financial, administrative, cost and pricing, or management information.

(4) Form, fit, and function data, as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

(5) Limited rights data, as used in this Article, 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, if included in this Article.

(6) Restricted computer software, as used in this Article, 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, if included in this Article.

(7) Technical data, as used in this Article, 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 database.

(8) Unlimited rights, as used in this Article, 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.

(b) Allocation of rights

(1) Except as provided in Paragraph (c) of this Article regarding copyright, the Government shall have unlimited rights in:

(i) Data first produced in the performance of this Subcontract;

(ii) Form, fit, and function data delivered under this Subcontract;

(iii) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Subcontract; and

(iv) All other data delivered under this Subcontract, unless provided otherwise for limited rights data or restricted computer software in accordance with Paragraph (g) of this Article.

(2) The Subcontractor shall have the right to:

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, unless provided otherwise in Paragraph (d) of this Article;

(ii) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in Paragraph (g) of this Article;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with Paragraphs (e) and (f) of this Article; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this Subcontract to the extent provided in subparagraph (c)(1) of this Article.

(c) Copyright

(1) Data first produced in the performance of this Subcontract. Unless provided otherwise in Paragraph (d) of this Article, the Subcontractor may establish, without prior approval of the Company or Department of Energy (DOE), claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, expressly written permission of the DOE Contracting Officer, through the Company, is required to establish claim to copyright subsisting in all other data first produced in the performance of this Subcontract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including subcontract number). For data other than computer software the Subcontractor 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, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this Subcontract. The Subcontractor shall not, without prior written permission of the DOE Contracting Officer, through the Company , incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in Paragraph (g) of this Article, or as otherwise may be provided in a collateral agreement incorporated in or made part of this Subcontract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this Paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication, and use of data

(1) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this Paragraph (d) of this Article or expressly set forth in this Subcontract.

(2) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Subcontract which contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the DOE Contracting Officer, through the Company.

(3) The Subcontractor agrees not to assert copyright in computer software first produced in the performance of this Subcontract without prior written permission of the DOE Patent Counsel assisting the subcontracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions and submission requirements to assure utilization, dissemination, and commercialization of the data. The Subcontractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(e) Unauthorized marking of data

(1) Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with restrictive or limiting markings not authorized by this Subcontract, the Company with DOE approval may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:

(i) The Company, in coordination with DOE, shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Company, in coordination with DOE, for a good cause shown), the Government, and Company , shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions;

(iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subparagraph (e)(1)(i) of this Article, the Company, in coordination with DOE, shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the DOE Contracting Officer determines that the markings are authorized, the Subcontractor shall be notified in writing. If the Company determines, with concurrence of the DOE Contracting Officer, that the markings are not authorized, the Company shall furnish the Subcontractor a written determination, which determination shall become the final decision regarding the appropriateness of the markings, unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Company's decision. The Company and DOE shall continue to abide by the markings under this subparagraph (e)(1)(iii) until final resolution of the matter either by the Company's determination becoming final (in which instance the Government and the Company shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary, to respond to a request thereunder.

(3) This Paragraph (e) does not apply if this Subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title In of the Federal Property and Administrative services Act of 1949.

(4) Except to the extent the Company's action occurs as the result of the final disposition of the matter by a court competent jurisdiction, the Subcontractor is not precluded by this Paragraph (e) from bringing a claim pursuant to the Disputes Article of this Subcontract, as applicable, that may arise as the result of the Company removing or ignoring authorized markings on data delivered under this Subcontract.

(f) Omitted or incorrect marking

(1) Data delivered to the Company without either the limited rights or restricted rights notice as authorized by Paragraph (g) of this Article, or the copyright notice required by Paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and Company assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Subcontractor may request, within six (6) months (or a longer time approved by the Company for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the Company, in coordination with DOE, may agree to do so if the Subcontractor:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government and the Company have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Company, in coordination with DOE, may also:

(i) Permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software

(1) When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this Article are specified to be delivered under this Subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to the Company under this Subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer database for delivery to the Company are to be treated as limited rights data and not restricted computer software.

(2) Notwithstanding subsection (g)(1) of this Article, the Subcontract may identify and specify the delivery of limited rights data, or Company's Subcontract Administrator may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the Company will thereafter treat the data, subject to the provisions of sections (e) and (f) of this Article, in accordance with such Notice:

Limited Rights Notice

a. These data are submitted with limited rights under Subcontract No. _____ between _____ (Subcontractor) and Fluor Idaho, LLC (Company), under Company's Prime Contract with the U.S. Department of Energy (DOE). These data may be reproduced and used by the Government and Company with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Government or Company; except that the Government or Company may disclose these data outside the Government or Company for the following purposes, if any; provided that the Government and Company make such disclosure subject to prohibition against further use and disclosure:

(1) use (except for manufacture) by support services contractors or subcontractors within the scope of their contracts or subcontracts;

(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 or subcontractors participating in the Government's program of which this Subcontract is a part for information or use (except for manufacture) in connection with the work performed under their contracts or subcontracts 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;

(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.

b. This Notice shall be marked on any reproduction of these data, in whole or in part.

(h) Subcontracting

The Subcontractor has the responsibility to obtain from its Lower-tier Subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations under this Subcontract. If a Lower-tier Subcontractor refuses to accept terms affording the Government and the Company such rights, the Subcontractor shall promptly bring such refusal to the attention of the Company and not proceed with the lower-tier subcontract award without written authorization by the Company.

(i) Relationship to patents

Nothing contained in this Article shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) Inspection

The Subcontractor agrees, except as may be otherwise specified in this Subcontract for specific data items listed as not subject to this paragraph, that the DOE Contracting Officer or an authorized representative may, up to three (3) years after acceptance of all items to be delivered under this Subcontract, inspect at Subcontractor's facility any data withheld pursuant to Paragraph (g) of this Article for purposes of verifying Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE Contracting Officer shall designate an alternate inspector.

(End of clause)

PATENT RIGHTS-SMALL BUSINESS FIRMS OR NONPROFIT ORGANIZATIONS

This Article applies in subcontracts, for experimental, developmental, demonstration or research work to be performed by a small business or domestic nonprofit organization.

(a) Definitions

(1) "Invention" means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501 (c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501 (c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means: to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536(15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this article, the size standards for small business concerns involved in Government, procurement and Subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Subcontract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of contract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(8) "Patent Counsel", as used in this Article, means the Department Energy Patent Counsel assisting the procuring activity.

(b) Allocation of principal rights

The Subcontractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Article and 35 U.S.C. 203. With respect to any subject invention in which the Subcontractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Subcontractor

(1) The Subcontractor will disclose each subject invention to the Department of Energy (DOE) within two (2) months after the inventor discloses it in writing to its personnel responsible for patent matters. The disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure, the Subcontractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.

(2) The Subcontractor will elect in writing whether or not to retain title to any such invention by notifying DOE and Contractor within two (2) years of disclosure. However, in any case where publication, on sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Subcontractor will file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Subcontractor will file patent applications in additional countries or international patent offices within the earlier of 10 months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this Article may, at the discretion of the DOE, be granted.

(d) Conditions when the Government may obtain title. The Subcontractor will convey to DOE, upon written request, title to any subject invention:

(1) If the Subcontractor fails to disclose or elect title to the subject invention within the times specified in Paragraph (c) of this Article, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Subcontractor to disclose or elect within the specified times.

(2) In those countries in which the Subcontractor fails to file applications within the times specified in Paragraph (c) of this Article; provided, however, that if the Subcontractor has filed a patent application in a country after the times specified in Paragraph (c) of this Article, but prior to its receipt of the written request from DOE, the Subcontractor shall continue to retain title in that country.

(3) In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Subcontractor and protection of the Subcontractor right to file

(1) The Subcontractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Subcontractor fails to disclose the invention within the times specified in Paragraph (c) of this Article. The Subcontractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a party and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE; except when transferred to the successor of the part of the Subcontractor's business to which the invention pertains.

(2) The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Subcontractor, its licensees, or domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Subcontractor action to protect the Government's interest

(1) The Subcontractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title; and

(ii) Convey title to DOE when requested under Paragraph (d) of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly, in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor, each subject invention made under this Subcontract in order that the Subcontractor can comply with the disclosure provisions of Paragraph (c) of this Article, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this Article. The Subcontractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Subcontractor will notify DOE and the Contractor of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Subcontractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with Government support under (identify the Subcontract) awarded by the United States Department of Energy. The Government has certain rights in the invention.”

(g) Subcontracts

(1) The Subcontractor will include this Article, suitably modified to identify the parties, in all lower-tier subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The lower-tier subcontractor will retain all rights provided for the Subcontractor in this Article, and the Subcontractor will not, as part of the consideration for awarding a Subcontract, obtain rights in a lower-tier subcontractor’s subject invention.

(2) The Subcontractor shall include in all other lower-tier subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights article at DEAR 952.227-13.

(3) In the case of lower-tier subcontracts, at any tier, DOE, the lower-tier subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this Article constitute a contract between the lower-tier subcontractor and DOE with respect to the matters covered by this Article; 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 Article.

(h) Reporting on utilization of subject inventions

The Subcontractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with Paragraph (j) of this Article. As required by 35 U.S.C. 202 (c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Subcontractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this Article, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States, unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-rights

The Subcontractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Subcontractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Subcontractor 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 Subcontractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by Paragraph (i) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for subcontracts with nonprofit organizations. If the Subcontractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Subcontractor;

(2) The Subcontractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate), when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Subcontractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention, if the Subcontractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Subcontractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Subcontractor. However, the Subcontractor agrees that the Secretary of Commerce may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Subcontractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications

(1) The Subcontractor shall direct any notification, disclosure, or request to DOE provided for in this Article to the DOE Patent Counsel assisting the procuring activity, with a copy of the communication to the DOE Contracting Officer and the Contractor.

(2) Each exercise of discretion or decision provided for in this Article, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the DOE Contracting Officer, the Subcontractor shall provide any or all of the following:

(i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the Subcontractor has applied for a patent;

(ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) A report, prior to close out of this Subcontract, listing all subject inventions or stating that there were none.

A.9 PATENT RIGHTS—OTHER THAN SMALL BUSINESS FIRMS OR NONPROFIT ORGANIZATIONS

This Article applies in subcontracts, for experimental, developmental, demonstration or research work to be performed by other than a small business or domestic nonprofit organization.

(a) Definitions

(1) "Invention" as used in this Article, means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Practical application" as used in this Article, 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.

(3) "Subject invention" as used in this Article, means any invention of the Subcontractor conceived or first actually reduced to practice in the course of or under this Subcontract.

(4) "Patent Counsel" as used in this Article, means the Department of Energy Patent Counsel assisting the procuring activity.

(5) "DOE patent waiver regulations" as used in this Article, means the Department of Energy patent waiver regulations at 41 CFR9-9.109- 6 or successor regulations. See 10 CFR Part 784.

(6) "Agency licensing regulations" and "applicable agency licensing regulations" as used in this Article, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(7) “Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(b) Allocations of principal rights

(1) Assignment to the Government. The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Subcontractor under subparagraph (b)(2) and Paragraph (d) of this Article.

(2) Greater rights determinations.

(i) The Subcontractor, or an employee-inventor after consultation with the Subcontractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in Paragraph 4 of this Article on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Subcontractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the DOE Contracting Officer and the Company at the time of the first disclosure of the invention pursuant to subparagraph 5.b of this Article, or not later than eight (8) months thereafter, unless a longer period is authorized in writing by the DOE Contracting Officer for good cause shown in writing by the Subcontractor. Each determination of greater rights under this contract shall be subject to Paragraph (c) of this Article, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Subcontractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Subcontractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, Subcontractor or inventor must notify the Patent Counsel and the Company of any decision not to continue prosecution of the application.

(iv) Upon request, the Subcontractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government

(1) With respect to each subject invention to which the Department of Energy grants the Subcontractor principal or exclusive rights, the Subcontractor agrees as follows:

(i) The Subcontractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Subcontractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right, in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784), to require the Subcontractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that: (1) such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (2) such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Subcontractor, assignee, or their licensees; (3) such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Company, assignee, or licensees; or (4) such action is necessary because the agreement required by Paragraph 9 of this Article 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.

(iii) The Subcontractor agrees to submit, on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph 3.a(ii) of this Article. To the extent data or information supplied under this section is considered by the Subcontractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Subcontractor agrees, when licensing a subject invention, to arrange 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 invention to any party.

(v) The Subcontractor agrees to provide for the Government's paid- up license pursuant to subparagraph (c)(1)(i) of this Article in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1) (ii) of this Article, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this Article, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this Paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Subcontractor

(1) The Subcontractor is hereby granted a revocable, nonexclusive, royalty- free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Subcontractor fails to disclose the subject invention within the times specified in subparagraph (c)(2) of this Article. The Subcontractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.

(2) The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Company, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Subcontractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this Article. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this Article, with a copy to the DOE Contracting Officer and the Company. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

- The commercial use that is being made, or is intended to be made, of said invention; and
- The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by, or on behalf of, the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this Subcontract as a condition of the grant of an advance waiver of the Government's title to inventions under this subcontract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this Article upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this Article, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part, unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this Article, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4) to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

- If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
- Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter, is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the Subcontractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this Article, the Subcontractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Subcontractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Subcontractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel, with copy to Contractor, of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports

(1) The Subcontractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Subcontractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under its contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Subcontractor shall furnish the DOE Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Subcontractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the DOE Contracting Officer and Company, within two (2) months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters or, if earlier, within six (6) months after the Subcontractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Subcontractor. The disclosure shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Subcontractor shall promptly notify Patent Counsel, with copy to the Company, of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor. The report should also include any request for a greater rights determination in accordance with subparagraph 2.b of this Article. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Company contends in writing at the time the invention is disclosed that was not so made.

(3) The Subcontractor shall furnish the DOE Contracting Officer, with a copy to the Company, the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the DOE Contracting Officer) from the date of this Subcontract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by subparagraph (e)(1) of this Article.

(ii) A final report, within three (3) months after completion of the work, listing all subject inventions or containing a statement that there were no such inventions, and listing all lower-tier subcontracts at any tier containing a patent rights article or containing a statement that there were no such lower-tier subcontracts.

(4) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly, in writing, to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor, each subject invention made under this Subcontract, in order that the Subcontractor can comply with the disclosure provisions of Paragraph 3 of this Article, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this Article.

(5) The Subcontractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this Article.

(f) Examination of records relating to inventions

(1) The DOE Contracting Officer or any authorized representative shall, until three (3) years after final payment under this Subcontract, have the right to examine any books (including laboratory notebooks), records, and documents of the Subcontractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this Subcontract to determine whether:

(i) Any such inventions are subject inventions;

(ii) The Subcontractor has established and maintains the procedures required by subparagraphs 5.a and d of this Article; and

(iii) The Company and its inventors have complied with the procedures.

(2) If the DOE Contracting Officer learns of an unreported Subcontractor invention that the DOE Contracting Officer believes may be a subject invention, the Subcontractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment

(1) Any time before final payment under this Subcontract, the Company may, withhold payment until a reserve not exceeding $50,000 or 5% of the amount of this Subcontract, whichever is less, shall have been set aside if, in the Company’s opinion, the Subcontractor fails to:

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this Article;

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this Article;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this Article;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this Article; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this Article.

(2) Such reserve or balance shall be withheld until the Company has determined that the Subcontractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this Article.

(3) Final payment under this Subcontract shall not be made before the Subcontractor delivers to the Company or DOE Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this Article, and an acceptable final report pursuant to subparagraph (e)(3)(ii) of this Article, and the Patent Counsel has issued a patent clearance certification.

(4) The Company may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of this Subcontract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Company rights under this Subcontract.

(h) Subcontracts

(1) The Subcontractor shall include the article at 48 CFR 952.227-11 (suitably modified to identify the parties) in all its lower-tier subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the lower-tier subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other lower-tier subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Subcontractor shall include this Article (suitably modified to identify the parties). The Subcontractor shall not, as part of the consideration for awarding a lower-tier subcontract, obtain rights in its lower-tier subcontractor's subject inventions.

(2) In the event of a refusal by a prospective lower-tier subcontractor to accept such an article, the Subcontractor:

(i) Shall promptly submit a written notice to the DOE Contracting Officer setting forth the lower-tier subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such lower-tier subcontract without the written authorization of the DOE Contracting Officer.

(3) In the case of lower-tier subcontracts at any tier, DOE, the Subcontractor, and Company agree that the mutual obligations of the parties created by this Article constitute a contract between the lower-tier subcontractor(s) and DOE with respect to those matters covered by this Article.

(4) The Subcontractor shall promptly notify the DOE Contracting Officer in writing upon the award of any lower-tier subcontract at any tier containing a patent rights article by identifying the lower-tier subcontractor, the applicable patent rights article, the work to be performed under the lower-tier subcontract, and the dates of award and estimated completion. Upon request of the DOE Contracting Officer, the Subcontractor shall furnish a copy of such lower-tier subcontract, and, no more frequently than annually, a listing of the lower-tier subcontracts that have been awarded.

(5) The Subcontractor shall identify all subject inventions of a lower-tier subcontractor of which it acquires knowledge in the performance of this Subcontract and shall notify the Patent Counsel, with a copy to the DOE Contracting Officer, promptly upon identification of the inventions.

(i) Preference for United States Industry

Unless provided otherwise, no Subcontractor that receives title to any subject invention and no assignee of any such Subcontractor shall 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 will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Subcontractor or 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) Atomic energy

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

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

(k) Background Patents

(1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention, and which is owned or controlled by the Subcontractor at any time through the completion of this Subcontract:

(i) Which the Subcontractor, but not the Government, has the right to license to others without obligation to pay royalties thereon; and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this Subcontract.

(2) The Subcontractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this Subcontract by or for the Government in research, development, and demonstration work only.

(3) The Subcontractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this Subcontract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Subcontractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE by the Subcontractor for DOE approval of such licensing.

(4) Notwithstanding subparagraph (k)(3) of this Article, the Subcontractor shall not be obligated to license any background patent if the Subcontractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Subcontractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) Publication

It is recognized that during the course of the work under this contract, the Subcontractor 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 Subcontract. In order that public disclosure of such information will not adversely affect the patent interests of DOE, the Company, or the Subcontractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) Forfeiture of rights in unreported subject inventions

(1) The Subcontractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Subcontractor fails to report to Patent Counsel within six months after the time the Subcontractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(3)(ii) of this Article, whichever is later.

(2) However, the Subcontractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this Article, the Subcontractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of, or under, this Subcontract and delivers the decision to Patent Counsel, with a copy to the DOE Contracting Officer and the Company; or

(ii) Contending that the invention is not a subject invention, the Subcontractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Contracting Officer or Counsel, with a copy to the DOE Contracting Officer and the Company; or

(iii) Establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes Article of this Subcontract), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this Paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

APPLICABLE TO SUBCONTRACTS EXCEEDING $750,000

FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall –

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of Clause)

SPECIAL CONTRACT REQUIREMENTS

H.35 TRANSITION TO FOLLOW-ON CONTRACT (POST 2020)

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this Contract in accordance with PWS Section C.8.23.01, Phase Out and Close Out Activities. It is therefore understood and further agreed in recognition of the above:

(a) That at the expiration of the Contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing its employees to interview for possible employment. For those employees who accept employment with the successor contractor, such employees shall be released in a coordinated manner with the successor contractor. The Contractor shall cooperate with the successor contractor and Government with regard to the termination or transfer arrangements for such employees to ensure maximum protection of employee service credits and fringe benefits.

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

(End of Clause)

H.39 IMPLEMENTING THE PRICE-ANDERSON AMENDMENTS ACT OF 2005

NUCLEAR HAZARDS INDEMNITY AGREEMENT

(a) Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) Definitions. The definitions set out in the Act shall apply to this clause.

(c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d)

(1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this Contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)

(1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

i. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

ii. Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

iii. Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the Contract activity; or

iv. Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1 Negligence;

2 Contributory negligence;

3 Assumption of risk; or

4 Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

v. The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

vi. For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this Contract.

(3) The waivers set forth above:

i. Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

ii. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

iii. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

iv. Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

v. Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

vi. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

vii. Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

viii. Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE through its Contracting Officer of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this Contract.

(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this Contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the Contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this Contract.

(j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

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

(End of Clause)

H.43 Notice of Civil Penalties for Violation of Security of DOE Classified or Sensitive Information or Data

The contractor shall comply with 42 U.S.C. 2282b relating to the safeguarding and security of restricted data. Any person who has entered into a contract or agreement with DOE, or a subcontract or sub-agreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed $100,000 for each such violation.

(End of Clause)

H.64 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014)

(a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.

(b) Work Stoppage. In the event of an Imminent Health and Safety Hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (DOE) facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the Contracting Officer.

(c) Shutdown. In the event of an imminent danger in relation to the facility safety envelope or a non-Imminent Health and Safety Hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Site Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Clause entitled, "FAR 52.242-15, Stop-Work Order."

(d) Facility Representatives. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to "stop work," which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the Facility Representative believes:

(1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;

(2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or

(3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

(e) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute "Contractor Representatives" for "the Contracting Officer" in all subcontracts.

(End of Clause)

H.67 DOE-H-2038 NUCLEAR FACILITIES OPERATIONS (OCT 2014)

(a) The work under this contract includes the operation of nuclear facilities. The Contractor recognizes that such operations involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public's health and safety and the environment. Therefore, the Contractor shall exercise a degree of care commensurate with the risks involved.

(b) As used in this clause, the term "nuclear materials" is a collective term which includes source material, special nuclear material, and those other materials to which, by direction of DOE, the provisions of DOE's Orders or Directives regarding the control of nuclear materials, which have been or may be furnished to the Contractor by DOE, apply. The Contractor shall accept existing procedures and, in a manner satisfactory to the Contracting Officer, propose revised, as appropriate, accounting and measurement procedures, maintain current records and institute appropriate control measures for nuclear materials in its possession commensurate with the national security and DOE policy. The Contractor shall make such reports and permits subject to inspection as DOE may require with reference to nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.

(c) Transfers of nuclear materials shall only be made with the prior written approval of the Contracting Officer, or authorized designee. Nuclear materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such nuclear materials in accordance with applicable DOE Orders and Directives regarding the control of nuclear materials, which have been or may be issued to the Contractor by DOE. The Contractor shall make a part of each purchase order, subcontract, and other commitment under this contract involving the use of nuclear materials for which the Contractor has accountability, appropriate terms and conditions for the use of nuclear materials and the responsibilities of the subcontractor or vendor regarding control of nuclear materials.

In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of nuclear materials for which the Contractor has accountability, the terms and conditions with respect to nuclear materials shall also identify who has the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

(End of Clause)

H.73 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014)

Application of this clause is governed by Fluor Idaho policies and procedures.

(a) Definition. For purposes of this clause, “domestic extended personnel assignments” are defined as any assignment of contractor personnel to a domestic location different than their permanent duty station for a period expected to exceed 30 consecutive calendar days.

(b) For domestic extended personnel assignments, the Contractor shall be reimbursed the lesser of temporary relocation costs (Temporary Change of Station allowances as described in the Federal Travel Regulation at §302-3.400 - §302-3.429) or a reduced per diem (Extended Travel Duty) in accordance with the allowable cost provisions of the contract and the following:

(1) When a reduced per diem method (Extended Travel Duty) is utilized, the allowances are as follows:

(i) Lodging. For the first 60 days and last 30 days of the assignment, the Government will reimburse costs associated with lodging at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days lodging will be reimbursed at the lesser of actual cost or 55% of Federal per diem.

(ii) Meals and Incidental Expenses. For the first 30 days and last 30 days of the assignment, the Government will reimburse costs associated with meals and incidental expenses (M&IE) at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days M&IE will be reimbursed at the lesser of actual cost or 55% of Federal per diem.

(2) The Government will not reimburse any costs associated with per diem (except for en-route travel) unless the contractor employee maintains a residence at the permanent duty station.

(3) The Government will not reimburse costs associated with salary premiums, per diem, lodging, or other subsidies for contractor employees on domestic extended personnel assignments after 3 years (except for the reimbursements described above during the last 30 days of the assignment).

(4) If an assignment has breaks within a three-year period, the calculation of the total length of the assignment will be as follows: If the break between assignments is less than 12 months, the Government will consider the assignment continuous for purposes of the three-year clock. For instance, if a contractor employee completes a 2-year assignment at location A and returns to his/her permanent duty station for 12 months, a subsequent new 2-year assignment back to location A will restart the 3-year clock. The assignments will be considered two separate 2-year assignments. On the other hand, if in the previous example the employee's return to his/her permanent duty station was 6 months, the Government would consider the second assignment to be a continuation of the first for purposes of the 3-year rule.

(5) The Government will not reimburse costs associated with salary premiums that exceed 10%.

(6) The Contractor shall include the substance of this clause in all subcontracts in which travel will be reimbursed at cost.

(End of Clause)

H.74 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014)

(a) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy (DOE) directives, or parts thereof listed in Section J, Attachment J-1 or identified elsewhere in the contract.

(b) The Contracting Officer may, at any time, unilaterally amend this clause, or other clauses which incorporate DOE directives, in order to add, modify or delete specific requirements. Prior to revising the listing of directives, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the list, and the Contractor shall be provided with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule, and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise the listing of directives and so advise the Contractor not later than 30 days prior to the effective date of the revision.

(c) Notwithstanding the process described in paragraph (b), the Contracting Officer may direct the Contractor to immediately begin compliance with the requirements of any directive.

(d) The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision pursuant to the clause of this contract at FAR 52.243-2 Changes – Cost Reimbursement (Aug 1987) – Alt II and III (Apr 1984).

(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor shall include this clause in all subcontracts to the extent necessary to ensure the Contractor's compliance with these requirements.

(End of Clause)

H.75 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)

(a) The Government may provide Government-owned and/or –leased motor vehicles for the Contractor's use in performance of this contract in accordance with the clause FAR 52.245-1, Government Property and/or FAR 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, as applicable.

(b) The Contractor shall ensure that its employees use and operate Government-owned and/or – leased motor vehicles in a responsible and safe manner to include the following requirements:

(1) Use vehicles only for official purposes and solely in the performance of the contract.
(2) Do not use vehicles for transportation between an employee's residence and place of employment unless authorized by the Contracting Officer.
(3) Comply with Federal, State and local laws and regulations for the operation of motor vehicles.
(4) Possess a valid State, District of Columbia, or commonwealth's operator license or permit for the type of vehicle to be operated.
(5) Operate vehicles in accordance with the operator's packet furnished with each vehicle.
(6) Use seat belts while operating or riding in a Government vehicle.
(7) Do not use tobacco products while operating or riding in a Government vehicle.
(8) Do not provide transportation to strangers or hitchhikers.
(9) Do not engage in "text messaging" while operating a Government vehicle, which includes those activities, defined in the clause at FAR 52.233-18, Encouraging Contractor Policies to Ban Text Messaging While Driving.
(10) In the event of an accident, provide information as may be required by State, county or municipal authorities and as directed by the Contracting Officer.

(c) The Contractor shall –

(1) Establish and enforce suitable penalties against employees who use, or authorize the use of Government vehicles for unofficial purposes or for other than in the performance of the contract; and

(2) Pay any expenses or cost, without Government reimbursement, for using Government vehicles other than in the performance of the contract.

(d) The Contractor shall insert this clause in all subcontracts in which Government-owned and/or –leased vehicles are to be provided for use by subcontractor employees.

(End of Clause)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING $2,000

H.10 DEPARTMENT OF LABOR WAGE DETERMINATIONS

In the performance of this Contract the Contractor and/or subcontractors shall comply with the requirements of the U.S. Department of Labor Wage Determination(s) located in Section J if the contract or subcontracts are covered by the Service Contract Labor Standards (formerly known as the Service Contract Act) consistent with Section 4(c), if applicable, of the Service Contract Labor Standards, and the Wage Rate Requirements (Construction) (formerly known as the Davis-Bacon Act) Wage Determination located in Section J if the contract or subcontracts are covered by the Wage Rate Requirements (Construction). Each contractor and subcontractor employee performing work covered by the Wage Rate Requirements (Construction) must be paid at least the pay and benefits set forth in the SSA (or other negotiated agreement between the Contractor and the Idaho Building and Construction Trades Council) required in Section H.7(f) or under the applicable Wage Rate Requirements (Construction) wage determination, whichever is higher. Revised wage determinations shall be required from the Department of Labor and incorporated into this contract at least once every two (2) years, but not more often than yearly. The contractor and/or subcontractors shall comply with the revised wage determinations for Service Contract Labor Standards covered employees.

(End of Clause)