

PART I – THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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H.1 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014)

Due to automated procedures employed in formulating this document, clauses and provisions contained within may not always be consecutively numbered.

CONTRACTOR HUMAN RESOURCE MANAGEMENT (CHRM) CLAUSES

H.2 DOE-H-2002 NO THIRD PARTY BENEFICIARIES (OCT 2014)

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H.3 DEFINITIONS

For purposes of the Section H.4 – H.7 clauses entitled, *Workforce Transition and Employee Hiring Preferences, Including Through Period of Performance*, and *Employee Compensation: Pay and Benefits*; and *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits, Workforce Transition and Benefits Transition: Plans and Timeframes*, the following definitions are applicable, unless otherwise specified:

- (a) “Contract Award Date” means the date the contract is signed by the Contracting Officer, noted in Block 28 of the SF 33, *Solicitation, Offer and Award*, Block 20C of the SF 26 *Award/Contract*.
- (b) “Contract Effective Date” means the date noted in Block 3 of the SF 26.
- (c) “Contract Transition Period” means the transition period as defined in Section F of this Contract.
- (d) “Incumbent Contractor” means Nuclear Waste Partnership, LLC (NWP) under contract DE-EM0001971.
- (e) “TRIAD National Security, LLC is the entity performing work for the National Nuclear Security Administration (NNSA) under Contract No. 8923318CNA000001 (TRIAD).
- (f) “Incumbent Employees” means employees who are regular employees of the Incumbent Contractor as of the effective date of the contract transition Notice to Proceed.
- (g) “Non-Incumbent Employees” means new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after the effective date of the contract transition Notice to Proceed

- (h) “Notice to Proceed” is defined in Section C, *Performance Work Statement*. References to “Notice to Proceed” in Section H CHRM clauses H.4 through H.14 specifically refer to the effective date of contract transition issued in writing by the Contracting Officer.

H.4 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES, INCLUDING THROUGH PERIOD OF PERFORMANCE

The Contractor and its subcontractors shall maintain and develop trained and qualified personnel to perform the work scope included in Section C, consistent with applicable law, and the terms of this Contract, including the paragraphs set forth below. Means of maintaining and developing a trained and qualified workforce may include, but are not limited to, the utilization of apprentices, interns, veterans, and summer hires. The Contractor shall comply with the hiring preferences set forth below.

- (a) The Contractor shall provide during the transition period and throughout the period of performance, preferences in hiring for vacancies at the Waste Isolation Pilot Plant (WIPP) Site for non-managerial positions (i.e., all those below the first line of supervision) in accordance with the hiring preferences in paragraphs (1) and (2) below, in descending order of priority, any applicable collective-bargaining agreement(s), any applicable site seniority list(s) as provided to the Contractor by the Contracting Officer, and in accordance with applicable law.
- (1) The Contractor shall provide Incumbent Employees and those employees employed by TRIAD at the Carlsbad, New Mexico (NM) site that are currently performing and certified to perform the mobile loading unit services, the hiring preferences in paragraphs (i) and (ii) in descending order of priority:
- (i) A preference in hiring for vacancies in non-managerial positions that are substantially equivalent to the position each respective Incumbent Employee and those TRIAD employees who are currently performing and certified to perform the mobile loading unit services at Carlsbad, NM site held on the effective date of the contract transition Notice to Proceed.
- (ii) A preference in hiring for vacancies in non-managerial positions for Incumbent Employees not hired into a substantially equivalent position in (1), but who meet the qualifications for another position.
- (2) The Contractor shall give a preference in hiring to individuals who, as former employees of NWP, are entitled to recall rights consistent with any applicable collective bargaining agreement(s) at the WIPP Site.
- (b) The Contractor shall provide, throughout the period of performance, preferences in hiring for vacancies at the WIPP Site for non-managerial positions (i.e., all those below the first line of supervision), in accordance with the hiring preferences in paragraphs (1) – (4) below, in descending order of priority.

- (1) Consistent with any applicable collective bargaining agreement(s) and site seniority lists at the WIPP Site, the Contractor shall give a preference in hiring to individuals who are former employees of the Incumbent Contractor, and who are entitled to recall rights.
- (2) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (A) and (B), in descending order of priority, who are eligible for the hiring preference in the Section I clause entitled “DEAR 952.226-74, Displaced Employee Hiring Preference,” consistent with the provisions of any applicable Workforce Restructuring Plan and Departmental guidance on workforce restructuring, as amended from time to time, regarding the preferential hiring of former employees:
 - (A) Former employees of the Incumbent Contractor or any other DOE contractor [or teaming subcontractor of a DOE contractor] at the WIPP Site.
 - (B) Former employees of other DOE contractor(s) or subcontractor(s) at a DOE defense nuclear facility eligible for the hiring preference.
- (3) The Contractor shall give a preference in hiring to individuals who (A) were formerly employed by the Incumbent Contractor at the WIPP Site, including individuals previously employed by NWP; and (B) were involuntarily separated (other than for cause) from their employment at the WIPP Site who are not precluded from seeking employment at the WIPP Site by the terms of employee waivers or releases of claims they executed, absent repayment of severance consistent with the terms of those agreements and who are qualified for a particular position; and (C) are qualified for the position or who are not qualified for a particular position, but who agree to become qualified on their own and can become qualified by the date set by the Contractor for commencement of active employment under this Contract.
- (4) The Contractor shall give a preference in hiring to individuals (A) who have separated from employment at the WIPP Site for any reason other than for cause; (B) who are not precluded from seeking employment with a DOE or NNSA contractor by the terms of employee waivers or releases of claims they executed, absent repayment of severance consistent with the terms of those agreements; and (C) who are qualified for a particular position.

H.5 DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS (OCT 2017)

(a) Contractor Employee Compensation Plan

The Contractor shall submit, for Contracting Officer approval, by close of contract transition, a Contractor Employee Compensation Plan (to be submitted during contract transition only) demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor’s policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable

cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

A description of the Contractor Employee Compensation Program should include the following components:

- (1) Philosophy and strategy for all pay delivery programs.
- (2) System for establishing a job worth hierarchy.
- (3) Method for relating internal job worth hierarchy to external market.
- (4) System that links individual and/or group performance to compensation decisions.
- (5) Method for planning and monitoring the expenditure of funds.
- (6) Method for ensuring compliance with applicable laws and regulations.
- (7) System for communicating the programs to employees.
- (8) System for internal controls and self-assessment.
- (9) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; “Compensation for Personal Services”. DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor’s Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

(c) Reports and Information

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

- (1) An annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts; and planned distribution of funds for the following year.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(4)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the System for Award Management (SAM) per FAR 52.204-10.
- (3) An annual Compensation and Benefits Report no later than March 15th to be submitted each year in iBenefits or its successor.

(d) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Incumbent Employees are the employees who are regular employees of the Incumbent Contractor

(A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees and to TRIAD employees who are currently performing and certified to perform the mobile loading unit services at Carlsbad, NM site as compared to pay provided by NWP and TRIAD for at least the first year of the term of the Contract.

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

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements, applicable collective bargaining agreement(s), and applicable law.

(2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after the effective date of contract transition Notice to Proceed. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

(A) The Contractor shall submit the below information, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

- (i) Any proposed major compensation program design changes prior to implementation.
- (ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.

- (iii) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:
- The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed **1.0** percent in total.
 - The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
 - Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
 - Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allowability will exist for employee job classes that exceed market position.
- (iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability. The CIP should include the following components and data:
- (1) Comparison of average pay to market average pay.
 - (2) Information regarding surveys used for comparison.
 - (3) Aging factors used for escalating survey data and supporting information.
 - (4) Projection of escalation in the market and supporting information.
 - (5) Information to support proposed structure adjustments, if any.
 - (6) Analysis to support special adjustments.
 - (7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual

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

- (8) A discussion of the impact of budget and business constraints on the CIP amount.
 - (9) Comparison of pay to relevant factors other than market average pay.
 - (v) After receiving DOE CIP approval or if criteria in (d)(3)(A)(iii) was met, contractors may make minor shifts of up to 10% of approved CIP funds by employment category (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) without obtaining DOE approval.
 - (vi) Individual compensation actions for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).
- (B) The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (d)(3)(A)(vi) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable base salary reimbursement under the contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.
- (C) Severance Pay is not payable to an employee under this Contract if the employee:
- (i) Voluntarily separates, resigns or retires from employment.
 - (ii) Is offered employment with a successor/replacement Contractor,
 - (iii) Is offered employment with a parent or affiliated company, or
 - (iv) Is discharged for cause.
- (D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(e) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans that increase costs or are contrary to Departmental policy or written instruction or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.
- (2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) except for defined benefit plans that are closed to new entrants and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.
 - (A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by the Contracting Officer approved comparator companies. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,
 - (B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.
- (5) When the benefit costs as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit

an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer.

- (6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.
 - (7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
 - (8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
 - (9) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (g)(6) below for Pension Management Plan requirements).
 - (10) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.
- (f) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
 - (2) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to Separate Plans at the time of new contract award or the extension of a contract.

(g) Basic Requirements

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

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC).
- (2) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

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

- (3) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate Plan.
 - (4) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
 - (5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
 - (6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.
- (h) Reimbursement of Contractors for Contributions to Defined Benefit (DB) Pension Plans
- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions

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

- (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(i) Reporting Requirements for Designated Contracts

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

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

- (2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
- (3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(j) Changes to Pension Plans

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

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
 - a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout,
 - an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs,
 - except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans,
 - the Summary Plan Description, and
 - any such additional information as requested by the Contracting Officer.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see (e)(1) above). The justification must:
 - demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,
 - provide the dollar estimate of savings or costs, and
 - provide the basis of determining the estimated savings or cost.

(k) Terminating Operations

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

- (1) No further benefits for service shall accrue.

- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.
- (4) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.
- (5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(I) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
- (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
- (3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
- (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
- (5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on

that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(m) Special Programs

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

(n) Definitions

- (1) **Commingled Plans.** Cover employees from the Contractor's private operations and its DOE contract work.
- (2) **Current Liability.** The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) **Defined Benefit Pension Plan.** Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) **Defined Contribution Pension Plan.** Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) **Designated Contract.** For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) **Pension Fund.** The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (7) **Separate Accounting.** Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (8) **Separate Plan.** Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

- (9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

H.6 SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Service Credit. The Contractor shall provide pension and other benefit plans to Incumbent Employees and all other employees hired by the Contractor and service credit for leave as set forth below:

(1) Service Credit for Leave. For Incumbent Employees hired by the Contractor as set forth in the Section H clause entitled, *Definitions*, the Contractor shall carry over the accrued leave balances and the length of service credit for purposes of determining rates of accruing leave for these employees as required by and consistent with applicable law and applicable collective bargaining agreement(s).

(2) Service Credit for Fringe Benefits Other Than Leave. Service credit for all individuals hired by the Contractor shall be applied consistent with any applicable law, and the terms of the applicable benefit plan(s). Service credit for purposes of severance pay is subject to Section H Clause entitled, *Employee Compensation: Pay and Benefits (Oct 2017)*.

(b) Allowable Salary for Key Personnel, if required: Within 20 days after the start of the effective date of the contract transition Notice to Proceed, the Contractor shall submit EM Form 3220.5, *Application for Contractor Compensation Approval*, to the Contracting Officer for each key personnel position listed in the Contract for a determination of cost allowability for reimbursement under the Contract. To support a reasonableness determination, the Contractor shall also provide compensation market survey data to support/justify the requested salary and any other information as requested by the Contracting Officer.

(c) Annual Actuarial Valuations. Notwithstanding the above, the Contractor has responsibility for administering and maintaining the qualified status of all pension and other benefit plans that it sponsors under this Contract consistent with the plan documents. The Contractor shall submit to the CO annual actuarial valuations for all applicable benefit plans as well as certify that the benefit plans are in full compliance with IRC and ERISA requirements. Such certification shall demonstrate that the benefit plans are qualified under the IRC. This valuation shall include but not be limited to written reports relating to how the benefit plans pass IRC discrimination, participation and coverage testing requirements. Each detailed annual written actuarial valuation shall identify any conditions that may adversely affect the qualification status of the plans within eighteen months or less of the date of the evaluation, including but not limited to discrimination, participation, and coverage testing requirements for the Contractor and any of its subcontractors that are participating employers in the plans.

(1) Meeting Testing Requirements. With the approval of the CO, the Contractor shall establish threshold factors that indicate when the Contractor's Defined Benefit Pension

Plan(s) may not meet testing requirements within the next two plan years. Every six months the Contractor shall identify when the Defined Benefit Pension Plan(s) may not meet testing requirements for the current plan year and the following plan year.

(2) Failure to Meet Testing Requirements. In the case that the approved threshold factors described above and other factors as approved or requested by the CO indicate that the Defined Benefit Pension Plan(s) may not meet testing requirements, the Contractor shall provide the CO with a corrective action plan for addressing the potential or actual failure to meet testing requirements and quarterly updates on the status for testing purposes. After the corrective action plan has been submitted and approved by the CO, the Contractor shall provide quarterly updates on the status for testing purposes.

(3) Changes to the Defined Benefit Pension Plan(s). In addition to any other provision of this Contract, including but not limited to Clause H.5, the Contractor shall provide advance written notification to the Contracting Officer for any other changes or amendments to the Defined Benefit Pension Plan(s) no less than 30 days prior to implementing the change or amendment. The advance written notification shall include the information detailed in in H.5(j)(1).

H.7 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES

- (a) Workforce Transition Plan. The Contractor shall submit a Workforce Transition Plan (WF Transition Plan) for Contracting Officer approval, describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Section H clause entitled, *Workforce Transition and Employee Hiring Preferences Including through Period of Performance*, and Section I clause entitled, DEAR 952.226-74, *Displaced Employee Hiring Preference*. The WF Transition Plan shall also detail the Contractor's plan for incorporating, if applicable, multiple unions with separate bargaining agreements. Notwithstanding timeframes identified elsewhere in the Contract, the Contractor shall perform the following activities in the specified timeframes:

- (1) Within 10 days after the effective date of the contract transition Notice to Proceed, the Contractor shall:

- (A) Provide to the Contracting Officer a list of Contractor personnel who will be responsible for transitioning the employees of the Incumbent Contractor and for development of the transition agreements, if any, including specifically the personnel responsible for ensuring that the Contractor complies with the National Labor Relations Act and Section H clause entitled, *Labor Relations*, and contact information or the above personnel.
- (B) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with Incumbent Contractor to ensure compliance with Section H clause entitled, *Workforce Transition*

and Employee Hiring Preferences Including through Period of Performance during the contract transition period.

- (C) Establish and submit to the Contracting Officer a draft communication plan detailing the communication the Contractor will engage in with the Incumbent Contractor, its employees, and any labor organizations representing those employees, regarding implementation of the hiring preference requirements set forth in Section H clause entitled, *Workforce Transition and Employee Hiring Preferences Including through Period of Performance*;
 - (D) Obtain information from the Incumbent Contractor, identifying the Incumbent Employees who have initially been identified as being at risk of being involuntarily separated. Provide and define a process as part of transition agreement(s) required for obtaining updated and continuous information through the Transition Period regarding the identification of employees by Incumbent Contractor that have been identified as being at risk of being involuntarily separated.
- (2) Within 15 days after the effective date of contract transition Notice to Proceed, the Contractor shall:
- (A) Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Section H clause entitled, *Workforce Transition and Employee Hiring Preferences Including through Period of Performance* and the requirements of Section H clause entitled, *Labor Relations* as applicable.
 - (B) Provide a copy to the Contracting Officer of its final communication plan with the Incumbent Contractor(s) regarding the implementation of the hiring preferences in Section H clause entitled, *Workforce Transition and Employee Hiring Preferences Including through Period of Performance* and communication process among DOE, site tenants, and, if applicable, labor organizations representing Incumbent Employees.
- (3) Within 30 days after the effective date of contract transition Notice to Proceed, the Contractor shall provide to the Contracting Officer a copy of the final WF Transition Plan described in paragraph (a) above.
- (4) Within 60 days after the effective date of contract transition Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final transition agreement(s) described in paragraph (a)(1)(B) above.
- (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's implementation of the hiring preferences required by Section H

clause entitled, *Workforce Transition and Employee Hiring Preferences Including through Period of Performance*. These reports shall include the following information: employees hire dates or anticipated hire dates; and, where applicable, the Incumbent Contractor or subcontractor that employed the employee and the Contractor or subcontractor that hired the employee.

(A) During the 90 day Contract Transition Period such reports shall be provided to the Contracting Officer on a weekly basis; or

(B) On a less frequent basis, as requested by the Contracting Officer.

(6) The Contractor shall implement the transition activities as set forth in the approved transition plan and such other transition activities as may be authorized or directed by the Contracting Officer.

(b) Benefits Transition Plan.

(1) The Contractor shall submit a draft Benefits Transition Plan for Contracting Officer approval, within 20 days after effective date of the contract transition Notice to Proceed, as set forth herein:

(A) A detailed description of the Contractor's plans and procedures as to how the Contractor will comply with Section H clause entitled, *Employee Compensation: Pay and Benefits*, and the Section H clause entitled, *Special Provisions Applicable to Workforce Transition & Employee Compensation Pay and Benefits* and this Paragraph (b)(1) and (b)(2). All transitions of the existing pension plan(s) and other existing benefit plans, as well as establishment of any new plans, shall be completed by the end of the Contract Transition Period.

(B) A detailed description of the Contractor's policies regarding pensions and other benefits for which the Department reimburses costs under this Contract, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

(C) A written description of how pension and other benefit plans provided to employees pursuant to Section H clause entitled, *Employee Compensation: Pay and Benefits* and Section H clause entitled, *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits* will be transitioned, or if needed, developed and implemented on or before the last day of the Contract Transition Period.

(D) If needed, the draft Benefits Transition Plan should address if an asset transfer agreement(s) is needed to transfer assets from the Incumbent Contractor's pension plan to a new defined benefit plan to cover past eligibility service in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract.

On or before the last day of the Contract Transition Period the Contractor shall provide a description of the necessary transactions, and how the Contractor proposes to comply with the Contract and applicable law governing such transactions and a schedule for Contracting Officer approval for when the benefit plan will be developed and assets transferred.

(2) The Contractor shall perform the following activities within the specified timeframes:

(A) Within 10 days after the effective date of contract transition Notice to Proceed, the Contractor shall:

- (i) Provide the Contracting Officer with a list of Contractor personnel (or advisors or representatives) who will be responsible for transitioning into the WIPP Pension Plan or other existing benefit plans, and/or development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor becomes a sponsor of the WIPP Pension Plan and contact information for the above personnel;
- (ii) Request the Incumbent Contractor to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsorship of the WIPP Pension Plan and other existing benefits plans, or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the 90-day Contract Transition Period; and
- (iii) Provide estimated costs and detailed breakouts of the costs to accomplish benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.

(B) Within 15 days after the effective date of contract transition Notice to Proceed, the Contractor shall provide to the Contracting Officer a list of the information and documents the Contractor has requested from the Incumbent Contractor(s) pertaining to the transition in the WIPP Pension Plan, and other existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems it encounters in obtaining information or documents requested from the Incumbent Contractor. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this Contract, including the timeframes set forth in this clause and the requirements in Section H clause entitled, *Workforce Transition and*

Employee Hiring Preferences Including through Period of Performance,
and Section H clause entitled, *Employee Compensation: Pay and Benefits*.

- (C) Within 20 days after the effective date of contract transition Notice to Proceed, the Contractor shall:
- (i) Submit the draft Benefits Transition Plan
 - (ii) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Section H clause entitled, *Employee Compensation: Pay and Benefits*, including requirements pertaining to the transition of employee benefit plans; and
 - (iii) Identify relevant Contractor personnel or other personnel who will administer or assist in administering the WIPP Pension Plan, including the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor.
 - (iv) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the Contract, if and when necessary. The meeting shall include the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its obligations under Section H.5 and H.6 Clauses entitled *Employee Compensation: Pay and Benefits* and *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits*, including execution of transition agreements with the Incumbent Contractor and other applicable entities. The minutes of the meeting as well as a written description of any substantive issues identified at the meeting shall be submitted to the Contracting Officer within two days after the meeting.
- (D) Within 30 days after the effective date of the contract transition Notice to Proceed, the Contractor shall provide a final written Benefits Transition Plan to include a description of how the existing pension or other benefit plans provided to employees pursuant to Section H.5 clause entitled, *Employee Compensation: Pay and Benefits*, may be amended or restated on or before the last day of the 90 day Contract Transition Period. If the creation of a new benefit plan(s) is necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract, the Contractor shall provide a description of the necessary transactions, including but not

limited to how the Contractor proposes to comply with the Contract and applicable law governing such transactions.

- (E) Within 45 days after the effective date of the contract transition Notice to Proceed, the Contractor shall:
- (i) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by the Incumbent Contractor(s), including but not limited to amendments effectuating the change in sponsorship/participating employer in the WIPP Pension Plan. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by the Incumbent Contractor. Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.
 - (ii) Submit to the Contracting Officer drafts of any new benefit plan(s) or plan changes to existing benefit plans with time frames for implementation as well as draft SPDs that the Contractor proposes to sponsor.
 - (iii) Contractor will enter into with the Incumbent Contractor(s), to ensure the Contractor's compliance with the pay and benefits requirements set forth in Section H.5 clause entitled, *Employee Compensation: Pay and Benefits*.
- (F) No later than 60 days after the effective date of the contract transition Notice to Proceed and prior to the adoption of the documents identified in Paragraphs (b)(1)(E)(ii) and (iii) above, the Contractor shall submit to the Contracting Officer the proposed final versions of these documents for approval.
- (G) No later than the end of the Contract Transition Period the Contractor shall submit copies of the executed transition agreements as required to the Contracting Officer.
- (H) If the Contractor is unable to fully implement a market-based plan by the end of the Contract Transition Period, the Contractor shall submit a fully documented request within 90 days after the end of the Contract Transition Period (including, but not limited to, plan description, proposed changes, schedule, implementation strategy, cost/benefit analysis) to the Contracting Officer for approval.

- (I) The Contractor shall respond to any comments provided by the Contracting Officer under this subparagraph (b)(2) within two days of receipt of the comments, or the period of time specified by the Contracting Officer.
- (3) After the Contract Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide to the Contracting Officer upon the request of the Contracting Officer:
 - (A) Documents relating to benefit plans offered to Contractor Employees, including but not limited to Summary Plan Descriptions, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees, and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract;
 - (B) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.5, *DOE-H-2001 Employee Compensation: Pay and Benefits*; and
 - (C) Additionally, the contractor shall provide timely data responses to Departmental annual and ad hoc pension and PRB data requests. Such data responses shall be provided within the timeframe established by the CO for each response and, if no timeframe is specified, the Contractor shall provide the data response within one calendar day.

H.8 DOE-H-7021 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (SEP 2017)

- (a) If this contract expires or terminates and DOE has awarded a contract under which a new Contractor becomes a sponsor/participating employer and assumes responsibility for management and administration of the WIPP Pension Plan and WIPP Welfare Benefit Plan or other benefit plans covering active or retired contractor employees with respect to service at WIPP site (collectively, the “Plans”), the Contractor shall cooperate and transfer to the new Contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled Plan is involved, the Contractor shall:
 - (1) Spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facilities into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.
 - (2) Bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor (s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be

placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

- (b) If this contract expires or terminates and DOE has not awarded a contract to a new Contractor under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the contract has been completed (any one such event may be deemed by the Contracting Officer to be “Contract Completion” for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of Contract Completion:
 - (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
 - (2) The Parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the Parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor’s costs will be reimbursed pursuant to applicable contract provisions.

H.9 DOE-H-7025 LABOR RELATIONS (SEP 2017)

- (a) The Contractor shall respect the right of employees to be free from discrimination in the workplace, including, but not limited to, discrimination within the meaning of the Age Discrimination in Employment Act of 1967, as amended, and to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities consistent with applicable laws.
- (b) Consistent with applicable labor laws and regulations, for work currently performed by members of the United Steelworkers and International Guards Union of America (formally represented by United Government Security Officers of America) on the effective date of

this Contract, the Contractor agrees to initially consult with these unions regarding the initial terms and conditions of employment and to recognize these unions as the collective bargaining representative(s) for employees performing work that has historically and traditionally been performed by members of these unions and is covered in the scope of this contract, and to bargain in good faith to a collective bargaining agreement that gives due consideration to applicable terms and conditions of the existing collective bargaining agreement(s) for work at the WIPP Site.

- (c) The Contractor shall submit its economic bargaining parameters for which DOE reimburses costs to, and obtain the approval of, the Contracting Officer regarding allowability of the costs, and compliance with the terms and conditions of the contract, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining negotiations, the Contractor shall notify, and obtain the approval of, the Contracting Officer before submitting or agreeing to any collective bargaining proposal that increases or may increase allowable costs above those previously approved in the economic bargaining parameters, or that could involve changes in any pension or other benefit plans, and such other items of special interest to DOE as are identified by the Contracting Officer. The preliminary approval of the Contracting Officer under this paragraph does not waive any other terms and conditions of the contract.
- (d) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR 22.1 and DEAR 970.2201 and all applicable Federal and State Labor Relations laws.
- (e) The Contractor shall use its best efforts to ensure that collective bargaining agreements negotiated under this Contract contain provisions designed to assure no disruption in services during the performance of the Contract. All such agreements entered into during the Contract period of performance should, to the extent that the parties voluntarily agree, provide that grievances and disputes involving the interpretation or application of the collective bargaining agreement will be settled without resorting to strike, lockout, or other disruption in services. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring no disruption in services. The Contractor shall include the substance of this subparagraph (e) in any subcontracts.
- (f) In addition to FAR 52.222-1, Notice to the Government of Labor Disputes, and other requirements in the contract, the Contractor shall immediately notify the Contracting Officer of all labor relations issues and matters of interest, including, but not limited to, organizing initiatives, unfair labor practice charges or complaints, work stoppages, picketing, labor arbitrations, National Labor Relations Board (NLRB) charges, legal or judicial proceedings, and settlement agreements, and will furnish such additional information as may be required from time to time by the Contracting Officer.

- (g) The Contractor shall immediately notify the Contracting Officer of any planned or actual strike or work stoppage involving its employees or employees of a subcontractor.
- (h) The Contractor shall provide the Contracting Officer a copy of all arbitration decisions issued by an arbitrator within one week of receipt of the decision.
- (i) The Contractor shall provide the Contracting Officer with a “Report of Settlement” after ratification of a collective bargaining agreement by accessing and inputting the information into the Labor Relations module (GCLR) of DOE’s iBenefits reporting system, or its successor system, during the next open quarter. Such information shall include negotiated wages, pension, medical and other benefits costs, and a copy of the collective bargaining agreement and any subsequent modifications.
- (j) The Contractor shall provide to the Contracting Officer a semi-annual report on grievances for which further judicial or administrative proceedings are anticipated, and all final step grievances. Within one day of receipt, the Contractor shall provide information on all arbitration requests. The reports are due June 30 and December 31, of each year, and should include the following information:
 - 1. A list of all final step grievances filed during the previous six-month period and grievances for which further judicial or administrative proceedings are anticipated, together with the dates filed;
 - 2. A brief description of issues regarding each grievance;
 - 3. If settled, the date of settlement, and terms of the settlement. If a denial is made at the final step and the period for requesting arbitration passes, report the matter as closed;
 - 4. If not settled during the six-month reporting period, carry the item over to the subsequent six-month reporting periods until settlement, request for arbitration, closure, or other proceeding occurs.

H.10 WORKFORCE RESTRUCTURING

- (a) The Contractor shall regularly analyze workforce requirements and will develop appropriate workforce restructuring strategies to ensure continued availability of the critical workforce knowledge, skills, and abilities necessary for performance under this Contract.
- (b) When the Contractor determines that a change in the workforce is necessary, the Contractor shall accomplish the workforce restructuring in a manner consistent with the DOE General Workforce Restructuring Plan, if applicable, in effect for the facility or site. The General Plan lays out how contractor workforce restructuring will be conducted at the applicable site in a manner that is consistent with DOE policy.

The Contractor is required to provide notification of Self-Select Voluntary Separation Programs (SSVSP) of 100 or more if consistent with the following parameters: 1) in accordance with approved contractor policies and contract requirements; 2) no enhanced benefits (severance or pension); 3) no backfilling or re-employment of employees for a one-

year period after severance is paid; 4) business case submitted 30 business days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a SSVSP will better position the contractor to conduct the mission work; copies of the self-select application and any employee waivers or releases of claims, and a communication plan; and 5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. There is no backfilling where a separating employee is replaced by an internal candidate so long as:

- (1) The separating employee is leaving voluntarily;
 - (2) The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, or other short term program;
 - (3) The replacement results in a net reduction in headcount and costs of regular employees; and
 - (4) The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.
- (c) The Contractor shall ensure it does not hire or rehire individuals who volunteered for termination during a Self-Select Voluntary Separation Program, at any DOE or NNSA site, during the one-year period following the separation. If an employee is hired or rehired prior to the one-year period, the employee may be required to pay back, to the contractor who provided the severance payment, all or a pro-rata amount of the severance received under the Voluntary Separation Program.
- (d) The Contractor must prepare and submit to the Contracting Officer a specific workforce restructuring plan (Specific Plan), as described below in paragraph (e), if the Contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.
- (e) The Contractor's Specific Plan shall lay out how the Contractor will conduct its workforce restructuring action at the site. The Contractor's Specific Plan for reducing 100 or more employees through an involuntary separation action shall be submitted to the Contracting Officer for approval at least 30 business days in advance of the first communication planned to be given to the employees and public. Any other Specific Plans must be submitted just in advance of the first communication planned to be given to the employees and public. The templates for contractor Involuntary Separation Plan, as well as the General Release and Waiver Forms, are available online at:
<http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistantgeneral-counsel-labor-and-pension>.
- (f) Pay-in-lieu of notice beyond two work-weeks requires written advance Contracting Officer approval. The Contractor shall submit the request to the Contracting Officer as part of the Workforce Restructuring package submitted for approval in (e) above, and include the number

of days of pay-in-lieu of notice requested, above two work-weeks, a detailed business justification, and the associated costs.

- (g) The Contractor is encouraged to consider the use of employee waivers and releases. DOE has developed a model waiver and release of claims. The forms are available on line at the website set forth in (e) above. Any deviation from the models must be approved by the Contracting Officer.
- (h) The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the Contracting Officer and DOE or NNSA site counsel, as applicable, prior to notification of employees selected for involuntary separation.
- (i) The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.
- (j) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.
- (k) Questions of cost allowability related to: a) any SSVSPs for which the Contractor provides only notification, or b) any involuntary separation program(s) conducted without Contracting Officer approval will be resolved consistently with applicable laws and regulations and with the terms and conditions of this contract, including, but not limited to, Department of Energy Acquisition Regulation (DEAR) at 48 C.F.R. 952.23171(f).

H.11 LABOR STANDARDS

- (a) The Contracting Officer will determine the appropriate labor standards that apply to specific work activities in accordance with the Construction Wage Rate Requirements (CWRR) statute (formerly known as the Davis-Bacon Act (DBA)), the Service Contract Labor Standards (SCLS) statute (formerly known as the Service Contract Act of 1965 (SCA)), or other applicable Federal labor standards law. Prior to the start of any proposed work activities, the Contractor shall request a labor standards determination from the Contracting Officer for specific work activities by submitting proposed work packages that describe the specific activities to be performed for particular work and other information as necessary for DOE to make a determination regarding the appropriate labor standard(s) for the work or aspects of the work. Once a determination is made and provided to the Contractor, the Contractor shall comply with the determination and shall ensure that appropriate labor standards clauses and requirements are flowed down to and incorporated into any applicable subcontracts.

- (b) The Contractor shall comply, and shall be responsible for compliance by any subcontractor, with the CWRR, the SCLS, or other applicable labor standards law. The Contractor shall conduct such payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE. When performing work subject to the CWRR, Contractor shall maintain payroll records for a period of three years from completion of the Contract, for laborers and mechanics performing the work. In accordance with FAR 52.222-41(g) and FAR 52.222-6(b)(4), the Contractor and its subcontractors shall post in a prominent job-site location, the wage determination and, as applicable, Department of Labor Publication: WH-1231, *Notice to Employees Working on Federal or Federally Assisted Construction Projects* and/or WH-1313, *Notice to Employees Working on Government Contracts*.
- (c) For subcontracts determined to be subject to the Service Contract Labor Standards, the Contractor will prepare Standard Form 98 (e98), Notice of Intention to Make a Service Contract and Response Notice. This form is available on the Department of Labor website at: <http://www.dol.gov/whd/govcontracts/sca/sf98/index.asp>. The form shall be submitted to the Contracting Officer.
- (d) In addition to any other requirements in the Contract, Contractor shall as soon as possible notify the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from contractor or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-41(t); disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract or a subcontract. The Contractor shall furnish such additional information as may be required from time to time by the Contracting Officer.
- (e) The Contractor shall prepare and submit, to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, *Davis Bacon Semi-Annual Labor Compliance Report*, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

H.12 DOE-H-2057 DEPARTMENT OF LABOR WAGE DETERMINATIONS (OCT 2014) (REVISED)

The Service Contract Labor Standards statute (formerly known as The Service Contract Act of 1965) is not applicable to this contract. However, in accordance with Section I Clause entitled “DEAR 970.5244-1 – *Contractor Purchasing System*”, subcontracts awarded by the Contractor are subject to the Standards to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure in accordance with H.11 above whereby DOE will determine if the Service Contract Labor Standards statute is applicable to particular subcontracts.

H.13 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014)

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

(1) Basic Requirements

- (a) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the Contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the Contract. Types of insurance include automobile, general liability, and other third-party liability insurance. Other forms of coverage for which the Contractor seeks reimbursement must be justified as necessary in the operation of the Department facility and/or the performance of the Contract and approved by the DOE in advance of acquiring such insurance.
- (b) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (see DEAR 970.5070 entitled, *Indemnification*, and DEAR 950.70 entitled, *Nuclear Indemnification of DOE Contractors*).
- (c) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307 entitled, *Insurance Under Cost Reimbursement Contracts*, FAR 31.205-19 entitled, *Insurance and Indemnification*, DEAR 970.5228-1 entitled, *Insurance - Litigation and Claims*.
- (d) Demonstrate that the insurance program is being conducted in the Government's best interest and at reasonable cost.
- (e) The Contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- (f) When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable.
- (g) Ensure self-insurance programs include the following elements:
 - (1) Compliance with criteria set forth in FAR 28.308 entitled, *Self-Insurance*. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention [SIR], such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.
 - (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
 - (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.

- (4) Accounting of self-insurance charges.
 - (5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
 - (a) The claims reserve shall be held in a special fund or interest-bearing account.
 - (b) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
 - (c) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer review.
 - (d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
 - (h) Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
 - (i) Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.
- (2) Plan Experience Reporting. The Contractor shall:
- (a) Provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:
 - (1) The amount paid for each claim.
 - (2) The amount reserved for each claim.
 - (3) The direct expenses related to each claim.
 - (4) A summary for the plan year showing total number of claims.
 - (5) A total amount for claims paid.
 - (6) A total amount reserved for claims.
 - (7) The total amount of direct expenses.
 - (b) Provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).
 - (c) Provide additional claim financial experience data, as may be requested, on a case-by-case basis.
- (3) Terminating Operations. The Contractor shall:
- (a) Ensure protection of the Government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
 - (b) Identify and provide continuing insurance policy administration and management

requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.

- (c) Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the Contractor shall retain this liability.
- (4) Successor Contractor or Insurance Policy Cancellation. The Contractor shall:
 - (a) Obtain the written approval of the Contracting Officer for any change in program direction;
 - (b) Ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

H.14 DOE-H-7024 WORKERS' COMPENSATION INSURANCE (SEP 2017) (REVISED)

- (a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- (b) Workers compensation loss income benefit payments, when supplemented by other programs (e.g., salary continuation and/or short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.
- (c) Contractors approve all workers compensation settlement claims up to \$100,000. Settlement claims above the \$100,000 require Contracting Officer approval.
- (d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

REMAINING SECTION H CLAUSES

H.15 DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017)

- (a) The term "DOE" means the Department of Energy, "NNSA" means the National Nuclear Security Administration.
- (b) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (c) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy; and (iv) the Chairman, Federal Energy

Regulatory Commission.

- (d) “Head of Contracting Activity” - As Designated by EM
- (e) The term “non-profit organization” means:
 - (1) a university or other institution of higher education,
 - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
 - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
 - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.
- (f) The term “Senior Procurement Executive” means for:
 - (1) Department of Energy – Director, Office of Acquisition and Project Management; and
 - (2) National Nuclear Security Administration – Associate Administrator for Acquisition and Project Management.

H.16 DOE-H-7001 FACILITIES (SEP 2017)

DOE agrees to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at or near the Carlsbad Field Office. The majority of this work will be conducted at Carlsbad, New Mexico with some work taking place across the DOE complex. WIPP is located approximately 32 miles from Carlsbad. WIPP covers 10,240 acres of federal land within a four-mile square. An area of 1,454 acres in the center of the site is for the exclusive use of the DOE. The 35-acre property (Zone I) containing most of the WIPP facility surface structures is located near the center of this exclusive use area, and is surrounded with a chain link fence. The WIPP site was constructed in the 1980’s for disposal of defense-generated transuranic (TRU) waste. The underground repository is carved out of a 2,000-foot-thick salt bed. WIPP is a 2,150 feet deep geologic repository for permanent disposal of a specific type of waste that is the byproduct of the nation's nuclear defense program.

- (b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract; and
- (c) Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

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

H.17 DOE-H-7002 LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION (SEP 2017)

- (a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.
- (b) Long Range Planning. It is the intent of the Parties to develop a ten-year strategic outlook for WIPP. Development of this document is the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at WIPP for the designated period. It also serves as a baseline for placement of work at WIPP. The contents of the plan should include: Mission Overview, Funding by Source, Human Resources, Core Capabilities, Science Strategies for the Future, Major Initiatives, Infrastructure Plans, Mission Readiness and Strategic Partnership Projects. The Contractor shall submit an annual plan which provides insight into accomplishments against this strategic document. The Contractor is expected to contribute to long range planning conducted by the Office of Environmental Management.
- (c) Budgetary Administration. DOE approval of program proposals and budget estimates will be reflected in work authorizations and financial plans developed and issued to the Contractor.

H.18 DOE-H-7003 CONTRACTOR ASSURANCE SYSTEM (SEP 2017) (REVISED)

- (a) The Contractor shall develop, execute, and maintain a contractor assurance system that is validated by the Responsible Corporate Official and Contractor's Board of Directors (or equivalent corporate oversight entity), and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:

- (1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.
 - (2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.
 - (3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.
 - (4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor's work processes and to carry out independent risk and vulnerability studies.
 - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (6) Integration of the assurance system with other management systems including Integrated Safety Management.
 - (7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Ensure development of metrics and targets that result in efficient and cost effective performance.
 - (8) Continuous feedback and performance improvement.
 - (9) An implementation plan (if needed) that considers and mitigates risks.
 - (10) Timely and appropriate communication to the Contracting Officer, including electronic access to assurance related information.
- (b) The initial contractor assurance system description shall be approved by DOE. Timely notification and DOE approval must be obtained for significant assurance system changes prior to the changes being made.

H.19 DOE-H-7004 DEFENSE AND INDEMNIFICATION OF EMPLOYEES (SEP 2017)

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

- (c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.
- (d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor's counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

H.20 DOE-H-7005 ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS (SEP 2017)

Allowable costs under this contract shall be determined according to the requirements of Section I Clause entitled DEAR 970.5232-2 – *Payments and Advances*. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this contract to the extent indicated:

- (a) ITEMS OF ALLOWABLE COSTS:
 - (1) Cost for the defense and indemnification of employees in accordance with the provisions of Section H Clause entitled *Defense and Indemnification of Employees*.
 - (2) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer.
 - (3) Notwithstanding the provisions of FAR 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in

research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.

- (4) Notwithstanding the provisions of FAR 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.
- (5) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not otherwise unallowable under any other provisions of this contract.
- (6) Subject to any other limitations on allowability contained in this contract, costs incurred and expenditures made by the Contractor's Board of Directors (or equivalent corporate oversight entity), its members, committees, panels and support personnel in connection with performance of work under this contract. The Contractor shall provide to the Contracting Officer, for an allowability determination, an annual accounting of these costs incurred and expenditures made.
- (7) Reachback costs for individuals from the home office directly supporting transition activities.

(b) ITEMS OF UNALLOWABLE COSTS:

- (1) Premium Pay for wearing radiation-measuring devices for Site and all-tier cost-type subcontract employees.
- (2) Salaries or other salary-like compensation of the Contractor's Board members, or that of members of subcommittees of the Board who are employees of the Contractor, or the equivalent corporate oversight entity/entities.
- (3) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to elsewhere in this contract or subsequently in writing by the Contracting Officer.

(c) OTHER MATTER:

Pursuant to Section I Clause entitled DEAR 970.5208-1 – *Printing*, the Contractor is authorized to certify, prior to the printing of individual jobs, that the use of more than one color of ink fulfills a specific functional need in accordance with the

guidance provided in the Government Printing and Binding Regulations, Title 44 of the U.S. Code and DOE directives related thereto. This authorization is subject to the Contractor providing to the Contracting Officer, on an annual basis, a report on all multicolor printing activities supported with DOE funds.

H.21 DOE-H-7011 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (SEP 2017)

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

H.22 DOE-H-7013 SOURCE AND SPECIAL NUCLEAR MATERIAL (SEP 2017)

The Contractor shall comply with all applicable regulations and instructions of DOE relative to the control of and accounting for source and special nuclear material (as these terms are defined in applicable regulations). The Contractor shall make such reports and permit such inspections as DOE may require with reference to source and special nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.

H.23 DOE-H-7014 STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION (SEP 2017)

- (a) Use of objective standards of performance, self-assessment and performance evaluation:
 - (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall site management. The performance-based management approach will include the use of objective performance goals and indicators, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance obligations under this contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the site.
 - (2) The Parties agree to utilize the process described within Section J, Attachment J-3 Performance Evaluation and Measurement Plan, to evaluate the performance of the contractor. The Parties further agree that the evaluation process described in Section J, Attachment J-3 Performance Evaluation and Measurement Plan will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the

Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

- (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the contract Performance Work Statement and performance indicators identified within Section J, Attachment J-3 Performance Evaluation and Measurement Plan. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Section J, Attachment J-3 Performance Evaluation and Measurement Plan. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Manager of the Carlsbad Field Office.
- (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this contract.
- (6) The Contracting Officer shall annually provide a written assessment of the Contractor's performance, which shall be based upon the process described in Section J, Attachment J-3 Performance Evaluation and Measurement Plan. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third-party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Section J, Attachment J-3 Performance Evaluation and Measurement Plan, that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success or failure in meeting performance expectations in a management or operating area may affect the level and/or mix of oversight attributed to a particular functional element.

(b) Standards of performance measure review:

- (1) The Parties agree to review the PEMP elements (goals, objectives, performance indicators, and expected levels of performance) contained in Section J, Attachment J-3 Performance Evaluation and Measurement Plan annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, performance indicators, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing goals, objectives, performance indicators, and expected levels of performance. It is expected that the goals, objectives, performance indicators, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
- (2) Failure to include an objective or performance indicator in the contract Section J, Attachment J-3 Performance Evaluation and Measurement Plan does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(2), (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision 10 days prior to issuance.

(c) DOE Quality Assurance Surveillance Plan:

DOE's Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor's performance under the contract shall consist primarily of the PEMP as called for within the Section I Clause entitled "DEAR 970.5203-1 – Management Controls". The QASP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations and acceptable quality levels for each task, describes how performance will be monitored and measured; describes how the results will be evaluated; and states how the results will affect contract payment.

H.24 DOE-H-7015 CAP ON LIABILITY (SEP 2017)

(Shall apply if the Contractor is a non-profit organization)

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

- (1) The Section I Clauses entitled FAR 52.245-1 – *Government Property* and DEAR 970.5245-1 – *Property*, paragraph (f)(1)(i)(C);
 - (2) The Section I Clause entitled DEAR 970.5228-1 – *Insurance--Litigation and Claims*, paragraph (f); with respect to prudent business judgment only; and
 - (3) The Section I Clause entitled DEAR 970.5228-1 – *Insurance--Litigation and Claims*, paragraph (g)(2); except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the Section I Clauses entitled FAR 52.245-1 *Government Property* and DEAR 970.5245-1 – *Property*.
- (b) Unless otherwise prohibited by law or regulation, the Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one (1) fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

H.25 DOE-H-7016 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS (SEP 2017)

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

H.26 DOE-H-7018 EXTERNAL REGULATION (SEP 2017)

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of WIPP, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and/or state and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

H.27 DOE-H-7019 SEPARATE ENTITY AND CORPORATE GUARANTEE (SEP 2017)

- (a) The work performed under this contract shall be by a separate entity, either an autonomous organization or an identifiable separate operating unit of a parent organization. The separate entity, whether a new corporate or legal entity formed solely to perform this contract or as a qualifying part of an existing legal or corporate entity, must be set up solely to perform this contract.

- (1) The separate entity shall perform no other commercial work for work for other Government agencies except as may be authorized under the terms of this contract.
 - (2) The contractor shall not utilize or otherwise divert contractor employees to other corporate work except as may be authorized under the terms of this contract or as otherwise authorized by the Contracting Officer.
- (b) If the Contractor forms a new separate corporate or legal entity from its parent organization(s) to perform the work under this contract, the new separate corporate or legal entity shall also be totally responsible for all contract activities.
- (1) The Contractor shall provide a guarantee of performance from its parent company in the form set forth in Section J, Attachment J-5 Performance Guarantee Agreement. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall each provide Guarantees for joint and severable liability for the performance of the Contractor.
 - (2) In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.28 DOE-H-7022 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SEP 2017)

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

H.29 DOE-H-7023 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR

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

- (b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the “Parties”, for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term “environmental requirements” means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, including the Interagency Agreement (Administrative Docket No.: II-CERCLA-FFA-00202, Spring 1992), consent orders, permits, and licenses.
- (c)
 - (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.
 - (ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

H.30 DOE-H-7027 DOE MENTOR-PROTÉGÉ PROGRAM (SEP 2017)

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher

learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall mentor at least one (1) active Protégé company at all times during the performance of this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE on an annual basis.

H.31 DOE-H-7028 LOBBYING RESTRICTION (SEP 2017)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 USC § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.32 DOE-H-7029 INTELLECTUAL AND SCIENTIFIC FREEDOM (SEP 2017)

- (a) The Parties recognize the importance of fostering an atmosphere at the WIPP Site conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the WIPP site and colleagues at universities, colleges, and National Laboratories or scientific facilities is vital to the success of scientific, engineering, and technical work performed by site personnel.
- (c) The Parties also recognize that protecting proprietary and national security interest, information and assets is a paramount concern and duty of the WIPP Site and its personnel.
- (d) In order to further the goals of the WIPP Site and the national interest, as well as protect proprietary information and national security, it is agreed by the Parties that the scientific and engineering personnel at WIPP Site shall be accorded the rights of publication or other dissemination of research, and participation in open public debate and in scientific, educational, or professional meetings and conferences, subject to limitations included in technology transfer agreements, work for other agreements, and such other limitations as may be required by the terms of this contract. Nothing in this clause is intended to interfere with the obligations of the Parties, including all WIPP Site personnel, to protect proprietary, classified, Privacy Act, or other sensitive information as provided for or required by law, regulation, Department of Energy Directive or Order, or elsewhere in this contract.

H.33 DOE-H-7030 CONFERENCE SPENDING (MANAGEMENT AND OPERATING CONTRACTS) (SEP 2017)

The Contractor agrees that:

- (a) The contractor shall ensure that contractor-sponsored conferences reflect the DOE’s commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE as well as other sponsors of work. In addition, the contractor will

ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

(b) The definition of a conference is provided in Attachment 2 of a letter from the Deputy Secretary of Energy, to the Under Secretary for Science and Energy, the Under Secretary for Nuclear Security, the Deputy Under Secretary for Management and Performance, Head of All Departmental Elements, Field Site Managers, and Program Managers entitled *Updated Guidance on Conference-Related Activities and Spending*, dated August 17, 2015.

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

(1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:

- (i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
- (ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

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

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

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

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

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

(g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the contracting officer

(1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the

conference and/or authorizes use of the official DOE seal, or other seals/logos/trademarks to promote a conference. Exceptions include instances where DOE:

- (i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specified conference) or
 - (ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or providing funding to the conference planners through Federal grants.
- (2) Attending a conference, giving a speech, or serving as honorary chairperson does not connote sponsorship.
- (3) The contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.

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

- (1) Track all conferences expenses.
- (2) Require the Contractor's Program Manager(or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of \$100,000 or greater.

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

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

H.34 DOE-H-7031 INFORMATION TECHNOLOGY ACQUISITIONS (SEP 2017)

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the contract and conducive to the research and development efforts of the Site. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Contractor's Program Manager shall annually certify to the Contracting Officer that this requirement is being incorporated into information technology acquisitions.

H.35 DOE-H-7033 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT (SEP 2017)

If the Contractor elects to use a Special Financial Institution Account Agreement, it shall be in accordance with DOE requirements (Financial Management Handbook, Chapter 6) and appended to

the Contract in Section J, Attachment J-4 entitled “Special Financial Institution Account Agreement”.

H.36 DOE-H-7037 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2017)

(a) Definitions. As used in this clause—

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

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

“Transaction” means any contract, order, other agreement or modification thereof (other than one involving an employer-employee relationship) entered into by the Contractor acquiring supplies or services (including construction) required solely for performance of the prime contract.

(b) Reporting. The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small Business Administration, in accordance with the most recent reporting instructions at <https://energy.gov/management/downloads/mosrc-reporting-instructions>. The Contractor shall report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. Contact your Contracting Officer if uncertain of information reporting requirements. The MOSRC reporting requirement does not replace any other reporting requirements (e.g. the Electronic Subcontracting Reporting System or the FFATA Subcontracting Reporting System).

H.37 DOE-H-2017 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS (OCT 2014) (REVISED)

The Contractor has provided a guarantee of performance from its parent company(s) in the form set forth in Section J, Attachment J-5 entitled, Performance Guarantee Agreement. The individual signing the Performance Guarantee Agreement for the parent company(s) should be the Responsible Corporate Official. The Responsible Corporate Official is the person who has sole corporate (parent company(s)) authority and accountability for Contractor performance. DOE may contact, as necessary, the single Responsible Corporate Official identified below regarding Contract performance issues. The parent companies shall proactively support the Responsible Corporate Official to ensure adverse contract performance issues are avoided,

identified, and/or resolved in a timely manner. The Responsible Corporate Official shall promptly notify the DOE Contracting Officer of the corrective actions (both taken and planned) to address the adverse contract performance.

Responsible Corporate Official: [Offeror Fill-In]

Name: _____

Position: _____

Company/Organization: _____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

Should the Responsible Corporate Official or their contact information change during the period of the Contract, the Contractor shall promptly notify the CO in writing of the change.

Identified below is each member of the Corporate Board of Directors that will have corporate oversight. DOE may contact, as necessary, any member of the Corporate Board of Directors, who is accountable for corporate oversight of the Contractor organization and key personnel.

Corporate Board of Directors: [Offeror Fill-In]

Name: _____

Position: _____

Company/Organization: _____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

Should any change occur to the Corporate Board of Directors, the majority interest, or their contact information during the period of the Contract, the Contractor shall promptly notify the CO in writing of the change.

The Responsible Corporate Official and Corporate Board of Directors shall be engaged and accountable for performance of the contract scope and the highest standard of business integrity through the Contractor's robust performance assurance system in accordance with DOE Order

226.1 *Implementation of Department of Energy Oversight Policy* and the Section H clause entitled *Contractor Assurance System*. The Responsible Corporate Official through the Contractor shall submit to the Contracting Officer a quarterly report using appropriate corporate metrics for DOE review. The quarterly report shall be risk-informed and a credible self-assessment that includes individual project performance, technical solutions, as needed, and appropriate coverage of potentially high consequence activities under the contract, including work of subcontractors. The annual Contractor Performance Assessment Reporting System (CPARS) evaluation shall consider the execution of the requirements of this clause, including the Contractor's performance managing its subcontractors.

H.38 DOE-H-2018 PRIVACY ACT SYSTEMS OF RECORDS (OCT 2014) (REVISED)

The contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the contract's Privacy Act clause.

DOE Privacy Act System Number	<u>DOE Privacy Act System Description</u>
DOE-5	Personnel Records of Former Contractor Employees (includes all former workers)
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-15	Intelligence-Related Access Authorization
DOE-31	Firearms Qualifications Records
DOE-33	Personnel Medical Records (present and former DOE employees and Contractor employees)
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-45	Weapons Data Access Control System
DOE-48	Security Education and/or Infraction Reports
DOE-51	Employee and Visitor Access Control Records
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites
DOE-77	Physical Fitness Test Records (for armed, uniformed guards)
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records
DOE-88	Epidemiologic and Other Health Studies, Surveys, and Surveillances

NOTE: If any of the above functions are subcontracted out (e.g., third party medical providers, etc.), the contractor must ensure the flow down of the Privacy Act systems of records and other necessary requirements and clauses to ensure the proper protection and turnover of records.

If the list in the table above does not address all of the systems of records that are generated based on contract performance, then the contractor shall notify the Contracting Officer prior to contract award or as soon as the discrepancy is discovered. The contractor shall monitor the

identified systems and notify the Contracting Officer immediately if there is a change to an existing system or if a new system is needed. Lack of notification does not exempt the contractor from complying with the Privacy Act. To ensure that systems are monitored consistently, contractors must review the list annually and notify the Contracting Officer, in writing, that the list is accurate and up to date.

The list in the table above shall be revised by mutual agreement between the contractor and the Contracting Officer, in consultation with the local Privacy Act Officer and/or General Counsel, as necessary, to keep it current. A formal modification to the contract is not required to incorporate these revisions; however, the revisions become effective upon mutual written agreement of the parties. The mutually agreed upon revisions shall have the same effect as if they were actually among the systems listed in the table above, for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the contract clause for FAR 52.224-2, *Privacy Act*. The revisions will be formally incorporated at the next convenient contract modification. Additional information on Privacy Act Systems of Records can be found on the DOE Privacy Office home page.

H.39 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE (JUL 2018)

The following provisions shall apply in the event the Contractor does not complete Contract performance for any reason:

- (a) The Government may take possession of and use all technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause DEAR 970.5227-1 *Rights in Data- Facilities*. The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from

contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.

- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract.

H.40 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014) (REVISED)

- (a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in 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, an activity that could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue, or an action that could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits, 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 (e.g., directing the operator/implementer of the activity or process causing the imminent hazard to stop work, initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect 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(s) should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the CO.
- (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 CO.
- (d) 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 CO” in all subcontracts.

H.41 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014) (REVISED)

(a) Definitions. As used in this clause:

“Acceptable contractor business systems” means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of “contractor business systems” in this clause.

Contractor business systems means:

(1) “Earned value management system”, if this contract includes the Section H clause entitled, *Earned Value Management System*;

(2) “Property management system”, if this contract includes the Section H clause entitled, *Contractor Property Management System Administration*; and

“Significant deficiency”, in the case of a Contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this Contract. If the Contractor plans to adopt any existing business system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements and criteria required in that specific business system clause.

(c) Significant deficiencies.

(1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The CO will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the CO determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice of potential withholding of provisional payment of fee and/or potential fee reduction in accordance with the Performance Evaluation and Measurement Plan.

(d) Withholding provisional payment(s) of fee.

(1) If the CO issues the final determination with a notice for significant deficiencies in a Contractor business system required under this contract, the CO will notify the Contractor, in writing, of a potential withholding of provisional fee payment until the CO has determined that the Contractor has corrected all significant deficiencies as directed by the CO's final determination. The Contractor shall, within 45 days of receipt of the notice, either:

- (i) Correct the deficiencies; or
- (ii) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain:

- (A) Root cause(s) identification of the problem(s);
- (B) The proposed corrective action(s) to address the root cause(s);
- (C) A schedule for implementation; and
- (D) The name of the person responsible for the implementation.

- (e) Correction of deficiencies.

(1) The Contractor shall notify the CO, in writing, when the Contractor has corrected the business system's deficiencies.

(2) Once the Contractor has notified the CO that all deficiencies have been corrected, the CO will take one of the following actions:

(i) If the CO determines that the Contractor has corrected all significant deficiencies as directed by the CO's final determination, the CO will notify the Contractor, in writing, that the contractor may request payment of withheld provisional fee associated with the CO's final determination. Any payment withholding under this Contract due to other significant deficiencies, will remain in effect until the CO determines that those significant deficiencies are corrected.

(ii) If the CO determines that the Contractor still has significant deficiencies, the CO shall continue withholding provisional fee payments in accordance with paragraph (d) of this clause.

(iii) If the CO determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the CO will discontinue withholding provisional fee payments, and allow the contractor to request provisional fee payments previously withheld directly related to the significant deficiencies identified in the Contractor notification.

(iv) At any time after the CO stops withholding provisional payment of fee, if the CO determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the CO will notify the contractor and reinstate or increase withholding, until the CO determines that the Contractor has corrected all significant deficiencies as directed by the CO final determination.

H.42 DOE-H-2024 EARNED VALUE MANAGEMENT SYSTEM (MAR 2019) (REVISED)

Definitions. As used in this clause:

“Acceptable Earned Value Management System” means an EVMS that complies with system criteria set forth in paragraph (a) this clause.

“Contract Funds Status Report” (CFSR) includes data to support forecasting, planning and decision making. DOE’s CFSR Data Item Description (DID) is to be used for the CFSR.

“Earned Value Management System” (EVMS) means an integrated set of policies, procedures and practices to objectively track performance on a project or program.

“Integrated Master Plan” (IMP) means an event-based plan consisting of a hierarchy of program events, each supported by specific accomplishments, and each accomplishment associated with specific criteria to be satisfied for its completion.

“Integrated Master Schedule” (IMS) means a networked, multi-layered list of tasks required to complete the work captured in a related IMP. The IMS should include all IMP events and accomplishments and support each accomplishment closure criteria. The IMS should contain a critical path and be resource-loaded with labor, material and equipment costs to include unit prices and quantities.

“Integrated Performance Management Report” (IPMR) includes data submitted monthly by the contractor from its EVMS. DOE’s IPMR DID is to be used for the IPMR.

“Over Target Baseline” (OTB) means an overrun to the Contract Budget Base (CBB), which is formally incorporated into the Performance Measurement Baseline (PMB) for management purposes.

“Over Target Schedule” (OTS) means the condition in which a baseline schedule is time-phased beyond the contract completion date.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of DOE officials to rely upon information produced by the EVMS for management purposes.

“Work Breakdown Structure” means a product-oriented hierarchy of tasks to be performed by the project team in support of project objectives.

(a) System criteria. In performing this contract, the Contractor shall establish, maintain, and use-

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- (1) Integrated performance management system. Central to this system shall be an EVMS that that complies with the Electronic Industries Alliance Standard 748 (EIA-748, current version at time of award), including a System Description. The EVMS shall be linked to

and supported by the contractor's various management systems, including work definition, planning and scheduling, work authorization and budgeting, performance measurement and analysis, change management, materials and subcontract management, cost estimating, accounting, and risk management.

(2) Management procedures. The contractor shall have procedures that enable timely, reliable, and verifiable information.

(i) Pursuant to the IPMR and IMS data items under this contract, the contractor shall maintain an IPMR and IMS that logically networks all project activities, reflecting the National Defense Industrial Association (NDIA) Planning & Scheduling Excellence Guide and the GAO Schedule Assessment Guide.

(ii) As required by the CFSR data item under this contract, the contractor shall develop and submit a CFSR, and must reconcile the CFSR with the IPMR on a quarterly basis.

(iii) All reporting must correspond to the applicable WBS elements, and shall be submitted timely and accurately and be current as of the close of the previous month's accounting period. (Note: The contractor should not establish a separate or unique internal performance management system solely for the purposes of the contract.)

(i) IPMR and CFSR data shall be submitted by the Contractor by uploading the data into Project Assessment and Reporting System (PARS) in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Project Management.

(b) EVMS certification.

(1) For contracts supporting projects valued at \$100M or more, the contractor's EVMS must be formally certified by the cognizant Federal agency as compliant with the EIA-748 guidelines (current version at the time of award). Pursuant to DOE Order 413.3, the DOE Office of Project Management is DOE's EVMS certifying authority. If, at the time of award, the contractor's EVMS has not been determined to be in compliance with the EIA-748 guidelines, the contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in its EVMS plan.

(2) For contracts supporting projects valued at less than \$100M but greater than \$50M, the contractor's EVMS must be compliant with EIA-748; however, external certification is not required. The use of the contractor's EVMS for this contract does not imply a Government determination of EIA-748 compliance for application to future contracts.

(c) Changes to the EVMS. The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to the Contracting Officer. If the contractor has one or more contracts in support of DOE capital asset projects that are valued at \$100M or more, unless a waiver is granted by DOE, any EVMS changes proposed by the contractor require approval of DOE prior to implementation. DOE will advise the contractor

of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.

- (d) Integrated baseline reviews. DOE will conduct an Integrated Baseline Review (IBR) not later than 180 calendar days after Notice To Proceed, the exercise of significant contract options, and the incorporation of major modifications. DOE and the contractor will use the IBR process described in the NDIA IBR Guide (or current version). During IBRs, the project baseline will be jointly scrutinized by the Government and the contractor to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.
- (d) Access to records. The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative to permit surveillance to ensure that the EVMS continues to comply with the criteria referenced in paragraph (a) of this clause.
- (e) Restructuring actions. In the event that the contractor concludes the performance baseline no longer represents a realistic plan, the contractor may determine that an over-target schedule or over-target baseline restructuring action is necessary. The contractor shall obtain approval of the Contracting Officer prior to implementing such restructuring actions. The request should also include detailed implementation procedures as well as a timeframe in accordance with the System Description. DOE will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).
- (f) Significant deficiencies.
 - (1) The Contracting Officer will provide a determination to the contractor, in writing, on any significant EVMS deficiencies. The determination will describe the deficiency in sufficient detail to allow the contractor to understand the deficiency.
 - (2) The contractor shall respond within 30 working days to a written determination from the Contracting Officer that identifies significant deficiencies in the contractor's EVMS. If the contractor disagrees with the determination, the contractor shall state, in writing, its rationale for disagreeing. In the event the contractor does not respond in writing to the determination within the response time, this shall indicate that the Contractor agrees with the determination.
 - (3) The Contracting Officer will evaluate the contractor's response or lack of response and notify the contractor, in writing, of the Contracting Officer's final determination concerning—
 - (i) Remaining significant deficiencies;
 - (ii) The adequacy of any proposed or completed corrective action;

- (i) System noncompliance, when the contractor's existing EVMS fails to comply with the EVMS guidelines in EIA-748; and
 - (iv) System disapproval, if corrections to the contractor's EVMS are not successfully completed within the timeframe set forth by the Contracting Officer. When the Contracting Officer determines that the existing EVMS contains one or more significant deficiencies, the Contracting Officer will use discretion to disapprove the EVMS based on input received from the DOE Office of Project Management.
- (4) When the contractor receives the Contracting Officer's determination of significant deficiencies, the contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (g) Withholding provisional payment(s) of fee. In the event that the contractor's EVMS is disapproved in accordance with subparagraph (g)(3)(iv), the Contracting Officer will withhold provisional payment(s) of fee until which time the contractor has resolved all EVMS deficiencies.
- (i) Flowdown requirements. With the exception of paragraphs (g) and (h) of this clause, for contracts supporting projects requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors.
- (1) The EVMS certification requirement applies to subcontractors meeting the criteria in paragraph (b) of this clause. In this event, the cognizant Federal agency, working through the prime contractor, will assess whether the subcontractor's system satisfies the EVMS guidelines contained in EIA-748.
 - (2) The prime contractor is responsible for reviewing and assuring the validity of all subcontractor reports. Cost and schedule reporting requirements are not to be confused with EVMS certification, as described in paragraph (i)(1) above.
 - (3) For subcontracts valued at \$100 million or more, the following subcontractors shall comply with the requirements of this clause, excluding those in paragraphs (g) and (h):

[Contracting Officer to insert names of subcontractors (or FFP subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]
 - (4) For subcontracts valued at less than \$100 million, the following subcontractors shall comply with the requirements of this clause, excluding those in paragraphs (g) and (h):

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

- (j) Extending a previous contractor's certified EVMS. If a contractor plans to adopt the existing system from the previous contractor or DOE site, the contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE-approved processes and procedures as the previous system. The contractor shall—
- (1) Identify the corporate entity that owns the certified EVMS and provide the certification documentation;
 - (2) Obtain prior approval from the Contracting Officer, who will be advised by the Office of Project Management, for proposed EVMS and surveillance changes;
 - (3) Be responsible for full compliance with paragraph (a) of this clause; and
 - (4) Be responsible for correcting any significant deficiencies previously identified to the previous contractor by the Contracting Officer in accordance with paragraph (g) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the contractor shall either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer, working jointly with the Office of Project Management, will provide a written final determination—to potentially include an implementation review—before extending the certification.

H.43 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014) (REVISED)

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

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of this clause.

Property management system means the Contractor's system or systems for managing and controlling Government property.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

- (b) General. The Contractor shall establish and maintain an acceptable property management system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its property management system meets the system criteria in paragraph (c) of this clause no later than 60 days after notice to proceed. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

- (c) System criteria. The Contractor's property management system shall be in accordance with 48 CFR 52.245-1.
- (d) Significant deficiencies.
 - (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
 - (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
 - (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (i) Remaining significant deficiencies;
 - (ii) The adequacy of any proposed or completed corrective action; and
 - (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (f) Withholding provisional payment(s) of fee. If the Contracting Officer makes a final determination to disapprove the Contractor's property management system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold provisional payment(s) of fee in accordance with that clause.

H.44 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)

- (a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing

their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.

- (b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of alternate dispute resolution (ADR) in accordance with the clause at FAR 52.233-1, *Disputes*. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision, but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible in evidence in any subsequent litigation proceedings.
- (c) Either party may request that the ADR process be used. The Contractor shall make a written request to the Contracting Officer, and the Contracting Officer shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed upon process.
- (d) ADR procedures may be used at any time that the Contracting Officer has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a Contracting Officer's final decision under the clause at FAR 52.233-1, *Disputes*, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the Contracting Officer's final decision and does not constitute reconsideration of the final decision.
- (e) If the Contracting Officer rejects the Contractor's request for ADR proceedings, the Contracting Officer shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the Contracting Officer's request to use ADR procedures, the Contractor shall provide the Contracting Officer with the reasons for rejecting the request.

H.45 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) (REVISED)

The Government may award contracts to other contractors for work to be performed at a DOE owned or DOE controlled site or facility. The Contractor shall cooperate fully with all other onsite DOE contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the CO or a duly authorized representative. The Contractor shall not commit any act which will interfere with the performance of work by any other contractor or by a Government employee and seek CO direction if there is an unresolved conflict.

H.46 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014) (REVISED)

Within 15 calendar days after the Notice to Proceed, the Contractor shall submit to the Contracting Officer for approval an Organizational Conflict of Interest (OCI) Management Plan (Plan). The Plan shall describe the Contractor's program to identify, avoid, neutralize, or mitigate potential or actual conflicts of interest that exist or may arise during contract performance and otherwise comply with the requirements of the clause at DEAR 952.209-72, *Organizational Conflicts of Interest*. The Plan shall be periodically updated as required during the term of the contract. The Plan shall include, as a minimum, the following:

- (a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities and other performing entities under the contract.
- (b) The procedures the Contractor will utilize to avoid, neutralize, or mitigate potential or actual conflicts of interest.
- (c) The procedures for reporting actual or potential conflicts of interest to the Contracting Officer. The resolution of potential or actual conflicts of interest that exist or may arise during contract performance shall be documented as part of the Plan.
- (d) The procedures the Contractor will utilize to oversee, implement, and update the Plan, to include assigning responsibility for management, oversight and compliance to an individual in the Contractor's organization with full authority to implement the Plan.
- (e) The procedures for ensuring all required representations, certifications and factual analyses are submitted to the Contracting Officer for approval in a timely manner.
- (f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed including collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency sensitive information and physical safeguarding of such information.
- (g) An OCI training and awareness program that includes periodic, recurring training and a process to evidence employee participation.
- (h) The enforceable, employee disciplinary actions to be used by the Contractor for violation of OCI requirements.

H.47 DOE-H-2043 ASSIGNMENT AND TRANSFER OF PRIME CONTRACTS AND SUBCONTRACTS (OCT 2014) (REVISED)

- (a) Assignment and Transfer of other DOE Prime Contracts. During the period of performance (POP) of this Contract it may become necessary for the DOE to transfer and assign existing or future DOE prime contracts in whole or in part supporting site work to this Contract. The Contractor shall accept the transfers and assignments of contracts. Transfer and assignment of prime contracts to the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. Any recommendations and/or suggestions

on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.

- (b) Assignment and Transfer of this Prime Contract. During the POP of this Contract it may become necessary for the DOE to transfer and assign in whole or in part this Contract to another DOE contractor. The Contractor shall accept the transfers and assignment. Transfer and assignment, if any, will be for administration purposes, and once transferred, will become a subcontract to the assignee. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.
- (c) Transfer and Assignment of Subcontracts. The Contractor agrees to transfer and assign or accept transfer and assignment of existing subcontracts including lower-tier subcontracts as determined necessary by DOE for continuity of operations. The transfer and assignment may be to or from another contractor or to or from DOE as a prime contractor. Transfer or assignment of subcontracts to or from the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the CO in writing. This Clause is required as a flow-down clause in all subcontracts.

The following subcontracts are determined necessary for transfer to the successor contractor:

<u>Subcontract</u>	<u>Title</u>	<u>Subcontractor Name</u>	<u>Subcontract Number</u>
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None.

H.48 DOE-H-2044 SAFETY DATA SHEET AVAILABILITY (OCT 2014) (REVISED)

In implementation of the clause at FAR 52.223-3, *Hazardous Material Identification and Material Safety Data*, the Contractor shall obtain, review and maintain a Safety Data Sheet (SDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. The SDS shall conform to the requirements of 29 CFR 1910.1200(g).

H.49 DOE-H-2045 CONTRACTOR COMMUNITY COMMITMENT (OCT 2014)

- (a) The Contractor, in fulfilling its commitments pursuant to the clause at DEAR 970.5226-3, *Community Commitment*, shall submit to DOE an annual plan for community commitment activities and report on program progress semi-annually.
- (b) The Contractor's annual plan for community commitment activities will identify those meaningful actions and activities that it intends to implement within the surrounding counties and local municipalities. The Contractor may engage in any community actions or

activities it determines meets the objectives of DOE's community commitment policy. Actions and activities in the areas listed below are representative of the areas in which the Contractor may choose to perform. However, the list is not all inclusive and is not intended to preclude the Contractor from initiating and performing other constructive community activities nor involvement in charitable endeavors it deems worthwhile.

- (1) Regional educational outreach programs. The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of contractor employees to schools, colleges, and universities. Regional educational outreach programs could involve providing contractor employees the opportunity to improve their employment skills and opportunities by an educational assistance allowance, provision for outside training programs either during or outside regular work hours, or executive training programs for nonexecutive employees. This could also involve participating in activities that foster relationships with regional educational institutions and other institutions of higher learning or encouraging students to pursue science, engineering, and technology careers.
- (2) Regional purchasing programs. The Contractor may conduct business alliances with regional vendors. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for subcontracts and purchase orders and/or assistance with the development of business systems (accounting, budget, payroll, property, etc.) to enable regional vendors to meet the audit and reporting requirements of the Contractor and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy the Contractor's needs.

The Contractor may coordinate and cooperate with the Chambers of Commerce, Small Business Development Centers, and like organizations, and make prospective regional vendors aware of any assistance that may be available from these entities. DOE encourages the use of regional vendors in fulfilling contract requirements.
- (3) Community support. The Contractor may directly sponsor specific local community activities or sponsor individual employees to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of its organization.
- (c) The Contractor may use fee dollars to pay for its community commitment actions as it deems appropriate. All costs to be incurred by the Contractor for community commitment actions and activities are unallowable and non-reimbursable under the contract.
- (d) The Contractor shall encourage its subcontractors, at all tiers, to participate in these activities.

H.50 DOE-H-2046 DIVERSITY PROGRAM (OCT 2014)

- (a) The Contractor shall develop and implement a diversity program consistent with and in support of the DOE's diversity program. A diversity plan covering the full period of performance shall be submitted to the CO for approval within 60 calendar days after the Notice to Proceed. Once the diversity plan is approved by the CO, the Contractor shall implement the diversity plan within 30 calendar days of its approval by the CO.
- (b) The diversity plan shall address, at a minimum, the Contractor's approach, to ensure an effective diversity program (including addressing applicable affirmative action and equal employment opportunity regulations) to include:
 - (1) A statement of the Contractor's policies and practices; and
 - (2) Planned initiatives and activities that demonstrate a commitment to a diversity program, including recruitment strategies for hiring a diverse workforce. The diversity program shall also address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's workforce; (2) educational outreach, including a mentor/protégé program; (3) stakeholder involvement and outreach; (4) subcontracting; and (5) economic development.
- (c) An annual diversity report shall be submitted pursuant to Section J, Attachment J-6 entitled, Contract Deliverables. This report shall provide a list of accomplishments achieved, both internally and externally during the current reporting period, and projected initiatives during the next reporting period. The report shall also list any proposed changes to the diversity plan which shall be subject to the CO's approval.

H.51 DOE-H-2047 FEDERAL HOLIDAYS AND OTHER CLOSURES (OCT 2014) (REVISED)

- (A) Designated Federal holidays. Federal employees observe the following Federal holidays:

- (1) New Year's Day
- (2) Birthday of Martin Luther King, Jr.
- (3) Washington's Birthday
- (4) Memorial Day
- (5) Independence Day
- (6) Labor Day
- (7) Columbus Day
- (8) Veterans Day
- (9) Thanksgiving Day
- (10) Christmas Day

Generally, Federal holidays that fall on Saturday are observed on the preceding Friday; and holidays that fall on Sunday are observed on the following Monday. The exact calendar day and/or date on which any of the listed holidays are observed may change year to year.

- (B) Other Federal Holidays. In addition to the holidays specified above in paragraph (a), Federal employees may observe other holidays designated by Federal Statute, Executive Order, or Presidential Proclamation as a one-time, day-off such as Inauguration Day for the President of the United States.
- (C) Unscheduled closures. Occasionally, an individual Federally-owned or -controlled site or facility will be closed or have an early closure on a normal work day for other reasons such as inclement weather or facility conditions. If an unplanned closure occurs, the Contractor will be notified as soon as possible after the determination that the Federally-owned or -controlled site or facility will be closed. If the Contractor determines it is necessary to work on a WIPP non-work day, the Contractor shall obtain written approval and be responsible for the safety of its personnel including storm warning, occupational medicine, HazMat, etc., and listing work on the WIPP plan of the day with the Central Monitoring Room or Emergency Operations Center (EOC) if activated, as applicable.
- (D) The Contractor shall provide the services required by the contract at Federally owned or – controlled sites or facilities on all regularly scheduled Federal work days and other days as may be required by the contract. The Contractor shall not provide the services required by the contract on those days, or portions thereof, specified in paragraphs (a), (b) and (c), except as required under paragraph (e). Accordingly, the Contractor’s employees, whose regular duty station in performance of this contract is a Federally-owned or controlled site or facility, shall not be granted access to the facility during those times specified in paragraphs (a), (b) and (c), unless required by paragraph (e) below.
- (E) There may be times that the Contractor is required to perform the services required by the contract on a Federal holiday or other closure times. In the event that such performance is required, the Contracting Officer will notify the Contractor, in writing, and specify the extent to which performance of the contract will be required. The Contractor shall provide sufficient personnel to perform the contractually-required work on those days, as directed by the Contracting Officer.
- (F) In accordance with the payment and other applicable clauses of the contract, the Government will not pay the Contractor for its employees’ regularly scheduled work hours not actually provided directly in performance of the contract due to an unscheduled closure as contemplated in paragraphs (b) and (c) above.

H.52 DOE-H-2050 INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014)

In accordance with the clause at FAR 52.219-9, Small Business Subcontracting Plan, the subcontracting plan contained in Section J, Attachment J-2, Individual Small Business Subcontracting Plan is hereby incorporated into and made a part of this contract.

H.53 DOE-H-2052 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (REVISED)

The Contractor's Representations, Certifications, and Other Statements, dated *[Offeror Fill-In]* made in response to Solicitation No. 89303320REM000077/ are hereby incorporated into the Contract.

H.54 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014)

- (a) The Contractor shall comply with all applicable safety and health requirements set forth in 10 CFR 851, *Worker Safety and Health Program*, and any applicable DOE Directives incorporated into the contract. The Contractor shall develop, implement, and maintain a written Worker Safety and Health Program (WSHP) which shall describe the Contractor's method for complying with and implementing the applicable requirements of 10 CFR 851. The WSHP shall be submitted to and approved by DOE. The approved WSHP must be implemented prior to the start of work. In performance of the work, the Contractor shall provide a safe and healthful workplace and must comply with its approved WSHP and all applicable federal and state environment, health, and safety regulations.
- (b) The Contractor shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public. When more than one contractor works in a shared workplace, the Contractor shall coordinate with the other contractors to ensure roles, responsibilities, and worker safety and health provisions are clearly delineated. The Contractor shall participate in all emergency response drills and exercises related to the Contractor's work and interface with other DOE contractors.
- (c) The Contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the Contracting Officer Representative (COR). Upon request, the Contractor shall provide to the COR a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for work performed at DOE facilities.
- (d) The Contracting Officer may notify the Contractor, in writing, of any noncompliance with the terms of this clause, and the corrective action(s) to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action(s).
- (e) In the event that the Contractor fails to comply with the terms and conditions of this clause, the Contracting Officer may, without prejudice to any other legal or contractual rights, issue a stop-work order halting all or any part of the work. Thereafter, the Contracting Officer may, at his or her discretion, cancel the stop-work order so that the performance of work may be resumed. The Contractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule due to any stop-work order issued under this clause.
- (f) The Contractor shall flow down the requirements of this clause to all subcontracts at any tier.

- (g) In the event of a conflict between the requirements of this clause and 10 CFR 851, the requirements of 10 CFR 851 shall take precedence.

H.55 DOE-H-2058 DESIGNATION AND CONSENT OF TEAMING SUBCONTRACTS (OCT 2014) (REVISED)

- (a) The following subcontractors have been determined to be Teaming Subcontractors:

[Offeror Fill-In]

- (b) In the event that the Contractor plans either to award or use a new Teaming Subcontract or replace an existing, approved Teaming Subcontract identified in paragraph(a) above, the Contractor shall provide advance notification to, and obtain consent from, the Contracting Officer, notwithstanding the consent requirements under any approved purchasing system or any other terms or conditions of the contract. Consent to these subcontracts is retained by the Contracting Officer and will not be delegated.

H.56 DOE-H-2058 DESIGNATION AND CONSENT OF TEAMING SUBCONTRACTS– ALTERNATE I (OCT 2014) (REVISED) (APPLIES TO TASK ORDERS ONLY)

- (a) The following subcontractors have been determined to be Teaming Subcontractors:

[Offeror Fill-In]

- (b) In the event that the Contractor plans either to award or use a new Teaming Subcontract or replace an existing, approved teaming subcontract identified in paragraph (a) above, the Contractor shall provide advance notification to, and obtain consent from, the Contracting Officer, notwithstanding the consent requirements under any approved purchasing system or any other terms or conditions of the contract. Consent to these subcontracts is retained by the Contracting Officer and will not be delegated.
- (c) In the event that the Contractor proposes to use a new, or replace, one or more of the approved Teaming Subcontractors identified in paragraph (a) above in performance of an individual Task Order, the Contractor shall provide advance notification to, and obtain consent from the cognizant Contracting Officer notwithstanding any other terms and conditions of the contract. Consent of these subcontracts is retained by the cognizant Contracting Officer for the Task Order and will not be delegated. The requirements of this paragraph (c) apply when the Contractor proposes the use of a new Teaming Subcontractor either prior to or subsequent to the award of the individual Task Order. The Contractor shall provide rationale and a detailed explanation including the equivalency or similarity of the experience and qualifications to the above listed Teaming Subcontractor and any other information requested by the cognizant Contracting Officer. Consent may be provided on a one time basis only and should not be construed as authorizing the use of the new Teaming Subcontractor on future Task Orders.

H.57 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014)

- (a) Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered.
- (b) The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits. Furthermore, all wildlife must be protected consistent with programs approved by the Contracting Officer.
- (c) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

H.58 DOE-H-2061 CHANGE ORDER ACCOUNTING (OCT 2014)

The Contractor shall maintain change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the CO or the matter is conclusively disposed of in accordance with the Disputes clause.

H.59 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES – ALTERNATE II (OCT 2014)

- (a) Acquisition of Information Technology. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for the Contractor's use in the performance of the contract; and the Contracting Officer may provide guidance to the Contractor regarding usage of such equipment, software, and third party services. The Contractor is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third party services at the Government's direct expense without prior written approval of the Contracting Officer. Should the Contractor propose to acquire information technology equipment, existing computer software, or third party services, the Contractor shall provide to the Contracting Officer justification for the need, including a complete description of the equipment, software or third party service to be acquired, and a lease versus purchase analysis if appropriate.

- (b) The Contractor shall immediately provide written notice to the Contracting Officer's Representative when an employee of the Contractor no longer requires access to the Government information technology systems.
- (c) The Contractor shall not violate any software licensing agreement, or cause the Government to violate any licensing agreement.
- (d) The Contractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Government except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Contractor.
- (e) If at any time during the performance of this contract the Contractor has reason to believe that its utilization of Government furnished existing computer software may involve or result in a violation of the software licensing agreement, the Contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the Contractor shall continue performance of the work required under this contract without utilizing the software.
- (f) The Contractor agrees to include the requirements of this clause in all subcontracts at any tier.
- (g) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract Section J, Attachment J-1 Requirements Sources and Implementing Documents.

**H.60 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM – ALTERNATE I
(OCT 2014)**

- (a) Pursuant to the clause at DEAR 952.204-2, *Security*, the Contractor agrees to comply with all security regulations and contract requirements as incorporated into the contract.
- (b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, *Laws, Regulations and DOE Directives*.

**H.61 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL
ASSIGNMENTS (OCT 2014) (REVISED)**

- (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) The Contractor's key personnel, their direct reports, and supervisors hired to perform physical work at the Waste Isolation Pilot Plant (WIPP) shall be physically located at either the Waste Isolation Pilot Plant (WIPP) site, the Skeen Whitlock Building in Carlsbad, New Mexico or other remote locations within a 75-mile radius of the WIPP facility to perform the

requirements of the contract and shall be considered the permanent duty stations for the purposes of this H clause.

- (c) 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 a rate not to exceed 100% of the Federal per diem rate at the assignment location. The intervening days M&IE will be reimbursed at a reduced rate, not to exceed 55% of Federal per diem.
 - (iii) Receipts are required to substantiate all lodging expenses and any other authorized expense greater than \$75.
 - (2) The Government will not reimburse any costs associated with per diem (except for en route travel) unless the contractor employee maintains a residence within 75 miles of 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 three (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 two-year assignment at location A and returns to his/her permanent duty station for 12 months, a subsequent new two-year assignment back to location A will restart the three-year clock. The assignments will be considered two separate two-year assignments. On the other hand, if in the previous example the employee's return to his/her permanent duty station was for six months, the Government would consider the second assignment to be a continuation of the first for purposes of the three-year rule.
 - (5) The Government will not reimburse costs associated with salary premiums that exceed 10% of base salary.
 - (6) The Contractor shall include the substance of this clause in all subcontracts in which travel will be reimbursed at cost.

H.62 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL - ALTERNATE I (OCT 2014)

(a) Pursuant to the clause at FAR 52.204-9, *Personal Identity Verification of Contractor Personnel*, the Contractor shall comply with applicable DOE regulations, policies and directives regarding identification, credential and access management for its personnel who have routine physical access to DOE-owned or -controlled sites or facilities or routine access to DOE information systems.

(b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, *Laws, Regulations and DOE Directives*.

H.63 DOE-H-2063 – CONFIDENTIALITY OF INFORMATION (OCT 2014)(REVISED)

(a) Performance of work under this Contract may result in the Contractor having access to Controlled Unclassified Information (CUI), including Official Use Only (OUO) information, via written or electronic documents, or by virtue of having access to DOE's electronic or other systems. Such CUI includes personally identifiable information (such as social security account numbers) or proprietary business, technical, or financial information belonging to the Government or other companies or organizations. The Contractor shall treat this information as confidential and agrees not to use this information for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the CO.

(b) The restrictions set out in paragraph (a) above, however, do not apply to:

- (1) Information which, at the time of receipt by the Contractor, is in the public domain;
- (2) Information which, subsequent to receipt by the Contractor, becomes part of the public domain through no fault or action of the Contractor;
- (3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;
- (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence; or
- (5) Information which is subject to release under applicable law.

(c) The Contractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the CO.

- (d) Upon request of the CO, the Contractor agrees to execute an agreement with any party which provides CUI to the Contractor pursuant to this contract, or whose facilities the Contractor is given access to that restrict use and disclosure of CUI obtained by the Contractor. A copy of the agreement, which shall include all material aspects of this clause, shall be provided to the CO for approval.
- (e) Upon request of the CO, the Contractor shall supply the Government with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company, companies or other organizations) of the information.
- (f) The Contractor agrees to flow down this clause to all subcontracts issued under this contract.

H.64 DOE-H-2070 KEY PERSONNEL – ALTERNATE I (OCT 2014) (REVISED)

- (a) Pursuant to the clause DEAR 952.215-70 entitled, *Key Personnel*, the required key personnel for this Contract are identified below (Table H-1):

Table H-1. Key Personnel

Name	Position
[Offeror Fill-In]	Program Manager
[Offeror Fill-In]	Capital Asset Projects Manager
[Offeror Fill-In]	WIPP Operations Manager
[Offeror Fill-In]	Mining/Underground Operations Manager
[Offeror Fill-In]	Environment, Safety and Health Manager
[Offeror Fill-In] (as applicable)	[Offeror Fill-In] (as applicable)

In addition to the requirement for the CO’s approval before removing, replacing, or diverting any of the listed key personnel, the CO’s approval is also required for any change to the position assignment of a current key person.

- (1) Key personnel team requirements. The CO and designated COR(s) shall have direct access to the key personnel assigned to the contract. All key personnel shall be assigned full-time to their respective positions and their permanent duty station is located at the WIPP Site or within the local area. The Contractor shall notify the CO and request approval in writing at least 60 days in advance of any changes to key personnel.
- (2) No key personnel position shall remain vacant for a period more than 30 days following CO approval of a change in key personnel or Contractor will be subject to reduction of fee according to (c)(1) or (c)(2) below respective to the key position vacated

- (3) Approval of changes to key personnel is at the unilateral discretion of the CO.
- (b) Definitions. In addition to the definitions contained in the clause DEAR 952.215-70, the following shall apply:
- (1) Key personnel are considered “managerial personnel” under the clause DEAR 952.231-71 entitled, *Insurance – Litigation and Claims*.
- (2) For the purposes of this Clause, “Changes to Key Personnel,” is defined as: (i) any change to the position assignment of a current key person under the Contract, except for a person who acts for short periods of time, in the place of a key person during his or her absence, the total time of which shall not exceed 30 working days during any given year (ii) utilizing the services of a new substitute key person for assignment to the Contract beyond 30 working days; or (iii) assigning a current key person for work outside the Contract.
- (3) For the purposes of this Clause, “Beyond the Contractor’s Control,” is defined as an event for which the Contractor lacked legal authority or ability to prevent “Changes to Key Personnel.”
- (c) Contract fee reductions for changes to Key Personnel.

Any key person changes according to the definition for “Changes to Key Personnel” above shall be subject to reduction of fee according to (c)(1) or (c)(2) below respective to the key position vacated.

- (1) Notwithstanding the approval by the CO, any time the Program Manager is removed, replaced, or diverted within three years of being placed in the position, the earned fee under the Contract may be reduced by \$1,000,000.00 for each and every such occurrence. A change to a key person “Beyond the Contractor’s Control” shall not result in a permanent reduction of fee under this subsection.
- (2) Notwithstanding the approval by the CO, any time a key person other than the Program Manager is removed, replaced, or diverted within three years of being placed in the position, the earned fee may be reduced by \$500,000.00 for each and every such occurrence. A change to a key person, other than the Program Manager, “Beyond the Contractor’s Control” shall not result in a permanent reduction of fee under this subsection.
- (3) The Contractor may request in writing that the CO consider waiving all or part of a reduction in earned fee. Such written request shall include the Contractor’s basis for the removal, replacement, or diversion of any key personnel. The CO shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

**H.65 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 52.251-2, *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.

H.66 DOE-H-2075 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014)

The Contractor agrees that:

- (a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."
- (b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

H.67 DOE-H-2076 LOBBYING RESTRICTIONS (NOV 2018)

In accordance with 18 U.S.C. § 1913, the Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.68 DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS (NOV 2018)

The Contractor shall take all necessary actions to achieve multifactor authentication (MFA) for standard and privileged user accounts of all classified and unclassified networks. In so doing, the Contractor shall comply with the requirements and procedures established in the document "U.S. Department of Energy Multifactor Authentication Implementation Approach" and its appendices as determined by the Contracting Officer.

H.69 DOE-H-2080 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018)

- (a) Program implementation. The Contractor shall, consistent with 10 CFR part 707, *Workplace Substance Abuse Programs at DOE Sites*, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts.
 - (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.
 - (2) The Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, *Workplace Substance Abuse Programs at DOE Sites*, as a condition for award of the subcontract. The Contractor shall review and approve each subcontractor's program and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
 - (3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

H.70 DEPARTMENT OF ENERGY NATIONAL TRAINING CENTER

The Contractor is encouraged to utilize the DOE National Training Center (NTC) training resources for occupational health, safety, safeguards, and security. NTC training is funded by DOE with no cost to the Contractor. NTC course offerings, information on NTC site certification, enrollment, and contact information can be found at <https://ntc.doe.gov>.

NTC training should be considered common core fundamental material. The Contractor may need to provide gap training to address site specifics identified through its approved Integrated Safety Management Program and associated program plans required by existing DOE requirements. Gap training should not repeat fundamental training core content.

H.71 WITHDRAWAL OF WORK

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

H.72 ORGANIZATIONAL CONFLICT OF INTEREST – AFFILIATES(S)

The Contractor, *[offeror fill-in] (Offeror to insert name of Contractor)* comprised of *[offeror fill-in] (Offeror to insert names of partner companies)*, is responsible for the completion of all aspects of this contract. In order to effectively and satisfactorily execute its responsibility to manage and accomplish the contract work, the Contractor must have complete objectivity in its oversight and management of its subcontractors. Therefore, consistent with the principle contained in Federal Acquisition Regulation subpart 9.5 and specifically section 9.505(a), and notwithstanding any other provision of this Contract, the Contractor is, absent prior written consent from the CO as provided herein, prohibited from entering into a subcontract arrangement with any affiliate or any affiliate of its partners, or utilize any affiliate or affiliate of its partners, to perform work under a subcontract. Such contractual relationship(s) are presumed to create an impaired objectivity type conflict of interest. If the Contractor believes the capabilities of an affiliate could be utilized in such a manner as to neutralize or avoid the existence of an organizational conflict of interest, the Contractor must obtain the CO’s written consent prior to placing the subcontract.

For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

H.73 SUBCONTRACTED WORK

The Contractor shall subcontract (in accordance with the definition at FAR Subpart 44.1) at least 20% of the total contract value to small businesses. The Contractor's subcontracted work shall be in compliance with the approved Section J, Attachment J-2 entitled, Individual Small Business Subcontracting Plan. Unless otherwise approved in advance by the CO, work to be performed by subcontractors selected after contract award shall be acquired through competitive procurements, to the extent required, with an emphasis on fixed-price subcontracts to the extent practicable. The use of cost-reimbursement, time-and-materials, and labor-hour subcontracts shall be minimized.

The subcontracting goals shall identify timely, discrete, and meaningful scopes of work that can be awarded to small business concerns. Meaningful work is work that is important to the performance of the technical and management approach defined by the prime contractor. It is characterized by strong technical content (e.g., discrete and distinct technical or programmatic scopes of work) and contributes to the successful achievement of DOE's goals. It should have a performance-based outcome that directly contributes to the overall contract outcome(s). The Contractor shall demonstrate effective subcontract management and administration, including but not limited to award of subcontracts as scheduled, inclusion of well-defined requirements, completion of any required subcontractor audits, and monitoring of subcontractor performance to ensure compliance with all applicable requirements including small business subcontracting plans, Buy American Act, and applicable labor statutes. Also, the Contractor shall respond to past performance inquiries for subcontractors upon request from DOE and other Federal agencies.

H.74 SUBCONTRACTOR TIMEKEEPING RECORDS SIGNATURE REQUIREMENT

The Contractor shall obtain timecards for all hourly subcontract employees, at all tiers, performing on non-fixed-price subcontracts. For purposes of this Clause, non-fixed-price subcontracts are those of a type containing a cost reimbursable or variable component in them, which includes those contract types covered by FAR Subpart 16.3, *Cost Reimbursement Contracts*, FAR Section 16.405, *Cost Reimbursement Incentive Contracts*, and FAR Subpart 16.6, *Time and Materials, Labor Hour, and Letter Contracts*. Note that the requirements of this Clause also pertain to Task Orders, tasks, and/or Contract Line Items Numbers from Indefinite Delivery (see FAR Subpart 16.5, *Indefinite Delivery Contracts*) and hybrid contracts that are of a type covered by the FAR citations in the prior sentence. The timecards must be obtained by the Contractor prior to the Contractor paying for these subcontract costs and prior to billing DOE for these costs. The timecards must reflect actual hours worked, be signed by the subcontract employee and be certified by the subcontract employees' supervisor prior to the Contractor obtaining them. Subcontractors at all tiers performing work under non-fixed-price subcontracts shall maintain adequate timekeeping procedures, controls, and processes for billing Government work. The Contractor shall, at least once every three years, conduct a labor audit of non-fixed-price subcontracts. The audit shall be conducted to unmodified Institute of Internal Auditors standards, if conducted internally, or unmodified Generally Accepted Government Auditing

Standards (GAGAS), if conducted externally. This Clause shall be flowed down to all non-fixed-price subcontracts at all tiers.

H.75 SUBCONTRACTOR SELECTION

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

H.76 SUBCONTRACTS

Prior to the placement of subcontracts and in accordance with the clause in Section I entitled, DEAR 970.5244-1 *Contractor Purchasing System*, the Contractor shall ensure that any required prior notice and description of the subcontract is given to the CO and any required consent is received. Except as may be expressly set forth therein, any consent by the CO to the placement of subcontracts shall not be construed to constitute approval of the Subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any Subcontractor privity of contract with the Government.

H.77 ANNUAL MANAGEMENT CONTROLS STATEMENT

On an annual basis, the Contractor through an officer at a level above the Program Manager, shall submit an assurance to the Contracting Officer that the system of management controls, including all systems revised in accordance with the H clause, entitled, *Application of DOE Contractor Requirements Documents*, is adequate to assure that the objectives of the management system are being accomplished and that the system and controls are effective and efficient."

H.78 PARENT ORGANIZATION SUPPORT

- (a) For onsite work, fee generally provides adequate compensation for parent organization expenses incurred in the general management of this Contract. The general construct of this Contract results in minimal parent organization investment (in terms of its own resources, such as labor, material, overhead, etc.) in the Contract work. DOE provides Government-owned facilities, property, and other needed resources.

Accordingly, allocations of parent organization expenses are unallowable for the prime contractor, teaming subcontractors, and/or teaming partners, unless authorized by the CO in accordance with this Clause.

- (b) The Contractor may propose, or DOE may require, parent organization support to:
 - (1) Monitor safety and performance in the execution of Contract requirements;

- (2) Ensure achievement of Contract environmental cleanup and closure commitments;
 - (3) Sustain excellence of Contract key personnel;
 - (4) Ensure effective internal processes and controls for disciplined Contract execution;
 - (5) Assess Contract performance and apply parent organization problem-solving resources on problem areas; and
 - (6) Provide other parent organization capabilities to facilitate Contract performance.
- (c) The CO may, with unilateral discretion, authorize parent organization support, and the corresponding indirect or direct costs, if a direct-benefit relationship to DOE is demonstrated. All parent organization support shall be authorized in advance by the CO.
- (d) If parent organization support is proposed by the Contractor or required by DOE, the Contractor shall submit for DOE review and approval, an annual Parent Organization Support Plan (POSP). The Contractor shall submit its initial POSP 30 days prior to:
- (1) The end of the Contract Transition Period; or
 - (2) The commencement date of parent organization support proposed by the Contractor or required by the Government.

Any subsequent POSP shall be submitted 60 days prior to the start of each year of Contract performance.

H.79 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA) OF 2000

- A. The EEOICPA establishes a program to provide compensation to current and former employees of the Department of Energy (DOE), its contractors and subcontractors, companies that provided beryllium to DOE, and atomic weapons employers (AWEs). Under EEOICPA, the has a requirement to verify employment histories, provide medical records, and provide radiation dose records and other information pertinent to National Institute for Occupational Safety and Health (NIOSH) radiation dose reconstruction and Department of Labor (DOL) Subtitle B and Subtitle E case preparation for anyone who applies for compensation under EEOICPA. DOE's responsibilities are implemented by the site with proper federal oversight with the budgetary, and programmatic direction assigned to the Office of Environment, Health, Safety and Security (AU-14).
- B. The Contractor shall establish a program and respond to the requirements of the EEOICPA for their employees and activities starting with the date of contract award. Activities shall include:
1. Perform the work necessary to complete EE-5 Employment Verification Forms requested by DOL for the EEOICPA Subtitle B program;
 2. Perform the work necessary to provide Personnel Exposure information requested by NIOSH as part of the EEOICPA Subtitle B program;

3. Perform the work necessary to complete Document Acquisition Requests (DARs) submitted by DOL for the EEOICPA Subtitle E program;
 4. Perform the work necessary to provide Visitor Personnel Exposure or information requested as part of the EEOICPA program;
 5. Perform other necessary EEOICPA related records work, as needed, including responding to records requests and site visits related to site characterization and hazard assessment work by DOL and NIOSH;
 6. Maintain local records to track the activities conducted under EEOICPA.
- C. The Contractor shall conduct the following work tasks within 60 days from receipt of request in support of the EEOICPA:
1. Perform the work necessary to complete Employment Verifications requested by DOL for the EEOICPA Subtitle B program:
 - a) Research and retrieve records needed to complete claims forms;
 - b) If necessary, work with corporate entities or unions to verify employment of former site workers;
 - c) Complete all necessary claims forms associated with the request;
 - d) Complete declassification, as needed, of records required for the processing of claims forms;
 - e) Completed forms, along with any attachments, shall be electronically submitted to DOL through the Secure Electronic Records Transfer (SERT) OR through encrypted email to DOE HQ;
 - f) Perform the work necessary to provide personnel exposure information requested by NIOSH as part of the EEOICPA Subtitle B program:
 - Research and retrieve records needed to complete claims forms;
 - Complete declassification, as needed, of records required for the processing of claims form;
 - Complete and sign off on all necessary claims forms associated with the request;
 - Completed forms and records shall be electronically submitted to NIOSH;
 - g) Perform the work necessary to complete Document Acquisition Requests (DARs) submitted by DOL as part of the EEOICPA Subtitle E program:
 - Research and retrieve records needed to complete claims forms;
 - Complete declassification, as needed, of records required for the processing of claims;
 - Complete and sign off on all necessary claims forms associated with the request;

- Completed forms and records shall be electronically submitted to DOL through the Secure Electronic Records Transfer (SERT) OR through encrypted email to DOE HQ;
- h) Perform the work necessary to provide Additional Personnel Exposure Information or Visitor Personnel Exposure Information requested by Oak Ridge Associated Universities (ORAU; contractor to NIOSH) as part of the EEOICPA Subtitle B program:
- Research and retrieve records needed to complete claims forms;
 - Complete declassification, as needed, of records required for the processing of claims form;
 - Complete and sign off on all necessary claims forms associated with the request;
 - Completed forms and records shall be electronically submitted to ORAU;
- i) The Contractor shall respond to any other inquiries and perform special projects as required by the EEOICPA;
- j) Maintain local records to track the activities under EEOICPA. These records shall be used to report status in the Contractor's Monthly Progress Report. Categories to be reported include the following:
- DOL-Employment Verification;
 - Exposure Data;
 - NIOSH – Requests;
 - NIOSH – Supplemental Data Request;
 - DAR Requests;
 - DOE Exposure Requests;
- k) Information to be reported for the above categories includes the following:
- Outstanding requests at beginning of reporting period;
 - Outstanding requests at end of reporting period;
 - Requests received during the reporting period;
 - Requests completed during reporting period;
 - Total hours;
 - Total cost.

H.80 ENVIRONMENTAL COMPLIANCE

- (a) General. The Contractor is required to comply with permits, consent decrees, administrative orders, and settlement agreements between the DOE and federal and state regulatory agencies.
- (b) Environmental Permits.
 - (1) Contractor and DOE as Co-Permittees. Where appropriate, required by law, or required by applicable regulatory agencies, DOE will sign permits as permittee, or as owner or as owner/operator with the Contractor as operator or co-operator, respectively. DOE will co-sign hazardous waste permit applications as owner/operator where required by applicable law. In this scenario, the Contractor shall coordinate its actions with DOE. DOE is responsible for timely notification to the Contractor of any issues or changes in the regulatory environment that impact or may impact contractor implementation of any permit requirement. The Contractor shall be responsible for timely notification to DOE of any issues or changes in the regulatory environment that impact or may impact contractor implementation of any permit requirement. Notification by the Contractor to DOE may be initially verbal with written documentation fully explaining the impact and the reason/rationale for the impact and possible consequences. Whenever reasonably possible all such materials shall be provided to DOE not later than 90 days prior to the date they are to be submitted to the regulatory agency.
- (c) Permit Applications. The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials necessary to be submitted to regulatory agencies for the purposes of obtaining a permit. The Code of Federal Regulations (40 CFR Part 270) and Resource Conservation Recovery Act (RCRA) regulations explicitly list types of Hazardous Waste Facility Permit (HWFP) modifications that are necessary. The regulations identify the types of modifications by types as Class 1,2 or 3. Whenever reasonably possible all such materials shall be provided to DOE initially not later than 90 days prior to the date they are to be submitted to the regulatory agency. The Contractor shall normally provide final regulatory documents to DOE at least 30 days prior to the date of submittal to the regulatory agencies for DOE's final review and signature or concurrence. Special circumstances may require permits to be submitted in a shorter timeframe. As soon as the Contractor is aware of any such special circumstance, the Contractor shall provide notice to DOE as to the timeframe in which the documents will be submitted to DOE. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature, schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such requests shall be submitted 30 days before such material would ordinarily be required to be provided to DOE. Any such schedule revision shall be effective only upon approval from the CO.

- (d) Copies, Technical Information. The Contractor shall provide DOE copies of all environmental permits, authorizations, and regulatory approvals issued to the Contractor by the regulatory agencies. DOE will, upon request, make available to the Contractor access to copies of environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with under applicable law. The Contractor shall and DOE will provide to each other copies of all documentation, such as letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the contract work. The Contractor and DOE shall maintain all necessary technical information and regulatory analysis required to support applications for revision of DOE or other Site contractor environmental permits when such regulatory analysis, applications or revisions are related to the Contractor's operations. Upon request, the Contractor or DOE shall provide to the other party access to all necessary and available technical information required to support applications for or revisions to permits or permit applications. Unless specific text is required by the regulation or permit, the Contractor shall provide to DOE a certification statement relating to such technical information in the form required by the following paragraph.
- (e) Certifications. The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. The Contractor shall include the following certification statement in the submittal of such materials to DOE:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The certification statement shall be signed by the individual authorized to sign such certification statements submitted to federal or state regulatory agencies under the applicable regulatory program.

- (f) Termination, Expiration, Permit Transfer. In the event of expiration or termination of this Contract, DOE may require the Contractor to take all necessary steps to transfer some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor Contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs, claims, demands, fines, and penalties, including reasonable legal costs, arising prior to the date such permits are transferred to another party. The Contractor shall not be liable for any such claims occurring

after formal transfer unless said claims result from the Contractor's action or inaction that occurred prior to transfer.

- (g) Miscellaneous. The Contractor shall accept assignment or transfer of permits pertaining to matters under this Contract currently held by DOE and its existing Contractor. The Contractor may submit for DOE's consideration requests for alternate review, comment, or signature schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such schedule revision shall be effective only upon written approval from the CO.

H.81 PARTNERING

The Contractor and the Government will establish a non-binding, signed Partnering Agreement for the operation/cleanup/performance of the WIPP Site. The agreement will establish a common vision with supporting goals and objectives, and expectations of doing business together in a manner that brings the best value to the Government. Partnering between DOE and the Contractor shall be conducted in a manner similar to the DOD Integrated Product and Process Development (IPPD) framework. The IPPD technique simultaneously integrates all essential activities to facilitate meeting cost and performance objectives.

H.82 NATIONAL NUCLEAR SECURITY ADMINISTRATION/ENVIRONMENTAL MANAGEMENT STRATEGIC SOURCING PARTNERSHIP

The Contractor shall participate in the National Nuclear Security Administration (NNSA)/Environmental Management (EM) Strategic Sourcing Partnership. Under this partnership, EM contractors shall work with the NNSA/EM Supply Chain Management Center to yield an enterprise-wide, synergistic strategic sourcing solution that leverages NNSA and EM purchasing power to gain pricing, processing, and report efficiencies to reduce costs overall for the Government.

H.83 LEGAL MANAGEMENT

- (a) The Contractor shall maintain a legal function to support litigation, arbitration, environmental, procurement, employment, labor, and the Price Anderson Amendments Act areas of law. The Contractor shall provide sound litigation management practices. Within 60 days of contract award, the Contractor shall provide a Litigation Management Plan compliant with 10 CFR 719, *Contractor Legal Management Requirements*.
- (b) As required by the CO, the Contractor shall provide legal and related support to the Government on regulatory matters, third-party claims, and threatened or actual litigation. Support includes, but is not limited to case preparation, document retrieval, review and reproduction, witness preparation, expert witness testimony, and assistance with discovery or other information requests responsive to any legal proceeding.
- (c) When evaluating requests for reimbursement or allowability of Contractor costs associated with defense and/or settlement of legal claims brought against the Contractor by a third party:

- (1) DOE will not reimburse Contractor legal defense costs or damages incurred where a judgment is issued finding that the Contractor engaged in discriminatory conduct prohibited by the terms of the Contract, such as those covered by FAR 52.222-26, *Equal Opportunity*; FAR 52.222-35, *Equal Opportunity for Veterans*; and FAR 52.222-36, *Equal Opportunity for Workers with Disabilities*.
- (2) DOE will not reimburse the Contractor legal costs associated with a settlement agreement (including legal defense costs, settlement awards, or both) associated with legal claims brought against the Contractor by a third party relating to discriminatory conduct prohibited by the terms of the Contract, such as those covered by FAR 52.222-26, *Equal Opportunity*; FAR 52.222-35, *Equal Opportunity for Veterans*; and FAR 52.222-36, *Affirmative Action for Workers with Disabilities*, where the CO determines that the plaintiff's claim(s) had more than very little likelihood of success on the merits. Where the plaintiff's claim had very little likelihood of success on the merits, the defense and settlement costs related to the claim are allowable if the costs are otherwise allowable under the Contract (e.g., reasonable, allocable).

H.84 INFORMATION TECHNOLOGY AND CYBER SECURITY REQUIREMENTS

In the performance of the information technology and cyber security requirements of this Contract, the Contractor is responsible for compliance with the following items. Consistent with Section I clause entitled *970.5204-2 Laws, Regulations, and DOE Directives*, omission of any applicable law or regulation from this list does not affect the obligation of the Contractor to comply with such law or regulation.

- (a) Code of Federal Regulations (CFR):
 - (1) 10 CFR 824 et seq., Procedures Rules for the Assessment of Civil Penalties for Classified Information Security Violations
 - (2) 10 CFR 1004 et seq., Freedom of Information Act
 - (3) 36 CFR Chapter XII, Subchapter B et seq., Records Management
 - (4) 41 CFR 102 et seq., Federal Management Regulation
- (b) United States Code (USC):
 - (1) 5 USC 552a et seq., Privacy Act
 - (2) 6 USC 1 et seq., Homeland Security Organization
 - (3) 6 USC 6 et seq., Cybersecurity
 - (4) 15 USC Chapter 100 et seq., Cybersecurity Research and Development
 - (5) 17 USC 1 § 101 et seq., Subject Matter and Scope Of Copyright, Definitions
 - (6) 18 USC 1030 et seq., Fraud and Related Activity in Connection with Computers
 - (7) 18 USC Chapter 119 et seq., Wire and Electronic Communications Interception and Interception of Oral Communications
 - (8) 18 USC Chapter 121 et seq., Stored Wire and Electronic Communications and Transactional Records Access

- (9) 29 USC 16, Subchapter V, 794 (d) et seq., Electronic and Information Technology
- (10) 31 USC § 501 et seq., Office of Management and Budget
- (11) 31 USC § 1101 et seq., The Budget and Fiscal, Budget, and Program Information; Definitions
- (12) 40 USC Subtitle III et seq., Information Technology Management
- (13) 41 USC Subtitle I, Division A, Chapter 1, Subchapter I, § 101 et seq., Federal Procurement Policy, Administrator
- (14) 44 USC 1 § 101 et seq., Joint Committee on Printing: Membership
- (15) 44 USC 21 et seq., National Archives and Records Administration
- (16) 44 USC 29 et seq., Records Management by the Archivist of the United States
- (17) 44 USC 31 et seq., Records Management by Federal Agencies
- (18) 44 USC 33 et seq., Disposal of Records
- (19) 44 USC 35 et seq., Coordination of Federal Information Policy
- (20) 44 USC 36 et seq., Management and Promotion of Electronic Government Services

(c) Executive Orders:

- (1) Executive Order 13984, Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities
- (2) Executive Order 13971, Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies
- (3) Executive Order 13960, Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government
- (4) Executive Order 13943, Addressing the Threat Posed by WeChat, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain
- (5) Executive Order 13942, Addressing the Threat Posed by TikTok, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain
- (6) Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain
- (7) Executive Order 13870, America's Cybersecurity Workforce
- (8) Executive Order 13859, Maintaining American Leadership in Artificial Intelligence
- (9) Executive Order 13858, Strengthening Buy-American Preferences for Infrastructure Projects
- (10) Executive Order 13834, Efficient Federal Operations
- (11) Executive Order 13833, Enhancing the Effectiveness of Agency CIOs
- (12) Executive Order 13800, Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure
- (13) Executive Order 13702, Creating a National Strategic Computing Initiative
- (14) Executive Order 13691, Promoting Private Sector Cybersecurity Information Sharing
- (15) Executive Order 13642, Making Open and Machine Readable the New Default for Government Information
- (16) Executive Order 13636, Improving Critical Infrastructure Cybersecurity
- (17) Executive Order 13589, Promoting Efficient Spending

- (18) Executive Order 13587, Structural Reforms To Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information
 - (19) Executive Order 13556, Controlled Unclassified Information
 - (20) Executive Order 13526, Classified National Security Information
 - (21) Executive Order 13231, Critical Infrastructure Protection in the Information Age
 - (22) Executive Order 13218, 21st Century Workforce Initiative
 - (23) Executive Order 13103, Computer Software Piracy
 - (24) Executive Order 12958, Classified National Security Information E-Government
- (d) Office of Management and Budget (OMB) Circulars/Memoranda:
- (1) OMB Circular A-11, Preparation, Submission, and Execution of the Budget
 - (2) OMB Circular A-16, Coordination of Geographic Information, and Related Spatial Data Activities
 - (3) OMB Circular A-130, Managing Federal Information as a Strategic Resource
 - (4) OMB Memorandum M-21-22, Update to Implementation of Performance Management Statutes
 - (5) OMB Memorandum M-21-07 Completing the Transition to Internet Protocol Version 6 (IPv6)
 - (6) OMB Memorandum M-21-06, Guidance for Regulation of Artificial Intelligence Applications
 - (7) OMB Memorandum M-21-05, Extension of Data Center Optimization Initiative (DCOI)
 - (8) OMB Memorandum M-21-04, Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act
 - (9) OMB Memorandum M-21-02, Fiscal Year 2020-2021 Guidance on Federal Information Security and Privacy Management Requirements
 - (10) OMB Memorandum M-20-32, Improving Vulnerability Identification, Management, and Remediation
 - (11) OMB Memorandum M-20-29, Research and Development Budget Priorities and Cross-cutting Actions
 - (12) OMB Memorandum M-20-19, Harnessing Technology to Support Mission Continuity
 - (13) OMB Memorandum M-19-26, Update to the Trusted Internet Connections (TIC) Initiative
 - (14) OMB Memorandum M-19-21, Transition of Electronic Records
 - (15) OMB Memorandum M-19-19, Update to Data Center Optimization Initiative
 - (16) OMB Memorandum M-19-18, Federal Data Strategy – A Framework for Consistency
 - (17) OMB Memorandum M-19-17, Enabling Mission Delivery through Improved Identity, Credential, and Access Management
 - (18) OMB Memorandum M-19-16, Centralized Mission Support Capabilities for the Federal Government
 - (19) OMB Memorandum M-19-10, Guidance for Achieving Interoperability with the National Freedom of Information Act (FOIA) Portal on FOIA.gov
 - (20) OMB Memorandum M-19-03, Strengthening the Cybersecurity of Federal Agencies by enhancing the High Value Asset Program
 - (21) OMB Memorandum M-18-12, Implementation of the Modernizing Government

Technology Act

- (22) OMB Memorandum M-17-25, Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure
- (23) OMB Memorandum M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information
- (24) OMB Memorandum M-17-06, Policies for Federal Agency Public Websites and Digital Services
- (25) OMB Memorandum M-17-04, Additional Guidance for Data Act Implementation: Further Requirements For Reporting And Assuring Data Reliability
- (26) OMB Memorandum M-16-21, Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software
- (27) OMB Memorandum M-16-20, Category Management Policy 16-3: Improving the Acquisition and Management of Common Information Technology: Mobile Devices and Services
- (28) OMB Memorandum M-16-17, OMB Circular No. A-123, Management’s Responsibility for Enterprise Risk Management and Internal Control
- (29) OMB Memorandum M-16-16, 2016 Agency Open Government Plans
- (30) OMB Memorandum M-16-15, Federal Cybersecurity Workforce Strategy
- (31) OMB Memorandum M-16-14, Category Management Policy 16-2: Providing Comprehensive Identity Protection Services, Identity Monitoring, and Data Breach Response
- (32) OMB Memorandum M-16-12, Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing
- (33) OMB Memorandum M-16-04, Cybersecurity Strategy and Implementation Plan (CSIP) for the Federal Civilian Government
- (34) OMB Memorandum M-16-02, Category Management Policy 15-1: Improving the Acquisition and Management of Common Information Technology: Laptops and Desktops
- (35) OMB Memorandum M-15-14, Management and Oversight of Federal Information Technology
- (36) OMB Memorandum M-15-13, Policy to Require Secure Connections across Federal Websites and Web Services
- (37) OMB Memorandum M-15-12, Increasing Transparency of Federal Spending by Making Federal Spending Data Accessible, Searchable, and Reliable
- (38) OMB Memorandum M-13-13, Open Data Policy – Managing Information as an Asset
- (39) OMB Memorandum M-13-10, Antideficiency Act Implications of Certain Online Terms of Service Agreements
- (40) OMB Memorandum M-12-21, Addendum to OMB Memorandum M-98-13 on Federal Use of Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)
- (41) OMB Memorandum M-12-10, Implementing PortfolioStat
- (42) OMB Memorandum M-11-03, Issuance of OMB Circular A-16 Supplemental Guidance
- (43) OMB Memorandum M-10-27, Information Technology Investment Baseline

Management Policy

- (44) OMB Memorandum M-10-26, Immediate Review of Financial Systems IT Projects
- (45) OMB Memorandum M-10-23, Guidance for Agency Use of Third-Party Websites and Applications
- (46) OMB Memorandum M-10-22, Guidance for Online Use of Web Measurement and Customization Technologies
- (47) OMB Memorandum M-10-10, Federal Agency Coordination on Health Information Technology (HIT)
- (48) OMB Memorandum M-10-06, Open Government Directive
- (49) OMB Memorandum M-08-15, Tools Available for Implementing Electronic Records Management
- (50) OMB Memorandum M-07-13, Implementation of the OMB Bulletin on Good Guidance Practices and Executive Order 13422 (amending Executive Order 12866)
- (51) OMB Memorandum M-05-24, Implementation of Homeland Security Presidential Directive (HSPD) 12 – Policy for a Common Identification Standard for Federal Employees and Contractors
- (52) OMB Memorandum M-05-23, Improving Information Technology (IT) Project Planning and Execution
- (53) OMB Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6)
- (54) OMB Memorandum M-04-26, Personal Use Policies and “File Sharing” Technology
- (55) OMB Memorandum M-04-24, Expanded Electronic Government (E-Gov) President’s Management Agenda (PMA) Scorecard Cost, Schedule and Performance Standard for Success
- (56) OMB Memorandum M-04-19, Information Technology (IT) Project Manager (PM) Qualification Guidance
- (57) OMB Memorandum M-04-16, Software Acquisition
- (58) OMB Memorandum M-04-15, Development of Homeland Security Presidential Directive (HSPD) – 7 Critical Infrastructure Protection Plans to Protect Federal Critical Infrastructures and Key Resources
- (59) OMB Memorandum M-04-08, Maximizing Use of SmartBuy and Avoiding Duplication of Agency Activities with the President’s 24 E-Gov Initiatives
- (60) OMB Memorandum M-04-04, E-Authentication Guidance
- (61) OMB Memorandum M-03-22, OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002
- (62) OMB Memorandum M-03-18, Implementation Guidance for the E-Government Act of 2002
- (63) OMB Memorandum M-03-17, Program Assessment Rating Tool (PART) Update
- (64) OMB Memorandum M-03-04, Determination Orders Organizing the Department of Homeland Security
- (65) OMB Memorandum M-02-15, Revision of OMB Circular A-16
- (66) OMB FedRAMP Memorandum, Security Authorization of Information Systems in Cloud Computing Environments

- (67) OMB Memorandum M-02-09, Reporting Instructions for the Government Information Security Reform Act and Updated Guidance on Security Plans of Action and Milestones
 - (68) OMB Memorandum M-02-01, Guidance for Preparing and Submitting Security Plans of Action and Milestones
 - (69) OMB Memorandum M-01-05, Guidance on Inter-Agency Sharing of Personal Data – Protecting Personal Privacy
 - (70) OMB Memorandum M-00-15, Guidance on Implementation of the Electronic Signatures in Global and National Commerce Act (E-SIGN)
 - (71) OMB Memorandum M-00-10, OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act
 - (72) OMB Memorandum M-00-07, Incorporating and Funding Security in Information Systems Investments
 - (73) OMB Memorandum M-99-18, Privacy Policies on Federal Web Sites
 - (74) OMB Memorandum M-99-05, Instructions on Complying with President’s Memorandum of May 14, 1998, “Privacy and Personal Information in Federal Records”
 - (75) OMB Memorandum M-98-13, Federal Use of Energy Savings Performance Contracting
 - (76) OMB Memorandum M-98-09, Updated Guidance on Developing a Handbook for Individuals Seeking Access of Public Information
 - (77) OMB Memorandum M-98-04, Annual Performance Plans Required by the Government Performance and Results Act (GPRA)
 - (78) OMB Memorandum M-97-09, Interagency Support for Information Technology
 - (79) OMB Memorandum M-97-07, Multiagency Contracts Under the Information Technology Management Reform Act of 1996
 - (80) OMB Memorandum M-97-02, Funding Information Systems Investments
 - (81) OMB Memorandum M-96-20, Implementation of the Information Technology Management Reform Act of 1996
- (e) Department of Homeland Security (DHS) Emergency and Binding Operational Directives
- (1) DHS ED 21-03, Mitigate Pulse Connect Secure Product Vulnerabilities
 - (2) DHS ED 21-01, Mitigate SolarWinds Orion Code Compromise
 - (3) DHS ED 20-04, Mitigate Netlogon Elevation of Privilege Vulnerability from August 2020 Patch Tuesday
 - (4) DHS ED 20-03, Mitigate Windows DNS Server Vulnerability from July 2020 Patch Tuesday
 - (5) DHS ED 20-02, Mitigate Windows Vulnerabilities from January 2020 Patch Tuesday
 - (6) DHS ED 19-01, Mitigate DNS Infrastructure Tampering
 - (7) DHS BOD 20-01, Develop and Publish a Vulnerability Disclosure Policy
 - (8) DHS BOD 19-02, Vulnerability Remediation Requirements for Internet Accessible Systems
 - (9) DHS BOD 18-02, Securing High Value Assets
 - (10) DHS BOD 18-01, Enhance Email and Web Security
 - (11) DHS BOD 17-01, Removal of Kaspersky branded Products
 - (12) DHS BOD 16-03, 2016 Agency Cybersecurity Reporting Requirements

(13) DHS BOD 16-02, Threat to Network Infrastructure Devices

(f) Secretarial Memoranda

- (1) EXEC-2019-003477, Release of DOE Order 205.1, Department of Energy Cybersecurity Program
- (2) EXEC-2018-004906, Integrated Joint Cybersecurity Coordination Center
- (3) EXEC-2018-001779, Data Center Optimization Initiative (DCOI) Inventory
- (4) EXEC-2016-003721, Information Technology Management Reforms
- (5) EXEC-2016-007461, DOE Cyber Data Sharing Implementation Requirements

(g) Office of Environmental Management (EM) Requirements

- (1) DOE Enterprise Cybersecurity Program Plan
- (2) EM Cybersecurity Program Plan

H.85 FINANCIAL MANAGEMENT AND INTEGRATED ACCOUNTING SYSTEM

(a) The Contractor shall maintain and administer a financial management system that includes an integrated accounting system satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied, and (1) is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures, costs, and encumbrances; (2) permits the preparation of accounts and accurate, reliable financial and statistical reports; and (3) assures that accountability for the assets can be maintained.

(b) The integrated accounting system must be linked to DOE's accounts through the use of reciprocal accounts and have electronic capability to transmit monthly and year-end self-balancing trial balances to the DOE's Primary Accounting System.

(c) The Contractor will support the implementation of a single, common enterprise resource planning (ERP) system, to be utilized across all DOE activities that may be adopted by DOE in the future.

H.86 MANAGEMENT OF ACCOUNTABLE PROPERTY

Accountable personal property is any property item with an original unit acquisition cost of \$10,000 or more; or meeting the precious metals, sensitive, or high-risk personal property definitions. Accountable property records must be managed and maintained current in a property management system of record from inception to formal disposition and removal from DOE inventory.

H.87 REAL PROPERTY ASSET MANAGEMENT

For all real property assigned, the Contractor is responsible for compliance with all real property asset management requirements, federal rules and regulations, and all applicable laws. Regardless of who performs the work, the Contractor is responsible for compliance with the requirements of this statement of work and is responsible for flowing down real property requirements to subcontractors to the extent necessary to ensure compliance. The Contractor shall coordinate with all other site contractors to ensure the work performed under this Contract is implemented in a consistent, efficient, and compliant manner across each Site.

The Contractor must ensure all actions involving planning, acquisition, sustainment, and disposition of real estate and real property assets are reviewed, and approved by an authorized Certified Realty Specialist (CRS), as appropriate, prior to execution by a DOE official with real estate delegation authority, to include termination or modification of rights of ownership, possession, entry or use of real property, even if these types of actions are contained within other documents, per *Supplemental Real Estate Guidance to Clarify Types of Agreements that are Real Estate Actions, and Approval of Real Estate Provisions of Multi-Subject Agreements*, January 2021. The Contractor shall submit all real estate proposals to acquire, utilize, and dispose of real property assets to the Site assigned DOE CRS, through the Site Assigned Real Property Officer (RPO) for review and approval. Real estate actions, subsequent to CRS review and approval, shall be executed at the appropriate level of delegated authority, such as authority possessed by a Real Estate Contracting Officer (RECO).

The Contractor shall manage real property in a safe, secure, cost-effective, and sustainable manner to ensure compliance with DOE O 430.1 Real Property Asset Management, applicable guidelines, protocols, procedures, processes, and the requirements in this Contract. The Contractor shall ensure real property assets are available, utilized, and in a suitable condition to support efficient mission execution. Where specific guidance is not given, the Contractor has latitude to accomplish the required outcomes via their most cost effective and efficient processes.

The Contractor shall apply industry leading practices, voluntary consensus standards, and customary commercial practices where practicable to ensure all actions involving planning, acquisition, sustainment, and disposition of interests in real property are effectively managed and compliant.

1. Asset Management & Site Sustainability: The Contractor shall maintain, in a complete and current condition, all real estate records for the Site, to ensure sustainability activities are consistent with requirements dictated by statutory, regulatory, and other DOE and EM policies. Align real property planning with DOE strategic plans, the Asset Management Plan and other program guidance to include:
 - a. Applicable requirements related and not limited to sustainability; environment, health, safety and security; earthquake risks; cultural and natural resource preservation; historic preservation; and climate change resilience, adaptation, and sustainability are addressed;
 - b. General purpose infrastructure and programmatic requirements;
 - c. Real property needs of site tenants;
 - d. Surveillance and maintenance and long-term stewardship (LTS) resource requirements;

- e. The identification of the mission and core capability associated with all real property;
 - f. The determination of the optimum set of facilities and infrastructure needed to maintain each applicable core capability; and
 - g. Perform comprehensive energy and water assessments for each operating covered facility at least once during any four-year period per EISA requirements.
2. **Real Estate & Budget Planning:** Based on DOE-furnished program planning guidance, and in coordination with the Site RPO and CRS, the Contractor must annually prepare and submit, a Five-Year Site Plan (5YSP) to identify financial investments for acquisition, sustainment, and disposition of real property assets to support DOE strategic plans, program guidance, and Departmental performance targets, for DOE review and approval, to include the following:
- a. Assessment of the current real property assets against program mission projections.
 - b. Identification of the specific real property asset projects and activities required to meet program mission projections.
 - c. Support EM's baseline plans for planning, acquisition, sustainment, and disposition of real property, OSFs, excess facilities, and excess contaminated facilities as required by DOE O 430.1.
 - d. Prioritized list of real property acquisition, sustainment, and disposition activities and projects;
 - e. Results of annual utilization surveys, energy and water surveys;
 - f. Summary of changes and the annual totals of real property acquisition and disposition building footprint;
 - g. The reduction and/or consolidation of space, specifically addressing space policy, program benchmarks for space utilization, and space assignment and utilization standards;
 - h. Remaining service life;
 - i. Identification of prioritized financial investments in real property; and
 - j. Support DOE in the development of the IFI Crosscut budget in accordance with guidance issued jointly by the Office of Management and Office of the Chief Financial Officer.
 - k. Ensure applicable requirements related and not limited to, adaptation, and sustainability; environment, health, safety and security; earthquake and other natural hazards risks; cultural and natural resource preservation; historic preservation; and climate change resilience are addressed;
 - l. Identify general purpose infrastructure and programmatic
 - m. requirements;
 - n. Define real property needs of site tenants;
 - o. Identify surveillance and maintenance, and long-term stewardship (LTS) resource requirements;
 - p. Ensure that mission and core capabilities are defined for all real property;

- q. Determine the optimum set of facilities and infrastructure needed to maintain each applicable core capability
 - r. Assess the real property portfolio against delineated program mission requirements by core capability at least every five years. More frequent reassessments are required if mission requirements change, the core capability assigned to an asset changes, the asset is repurposed, or there are major changes to the asset's physical condition or use.
3. Performance Measures and Reporting: The Contractor is responsible and accountable for any real property under its management and control and shall assist DOE, if requested, in developing real property asset performance measures commensurate with their assigned duties and responsibilities, including:
- a. Proposing performance measures annually;
 - b. Proposing performance measures that link performance of program goals and budgets to desired outcomes; and
 - c. Proposing annual performance targets for real property assets.
 - d. The Contractor shall support DOE in providing and maintaining data in *IPABS*, the *IPL*, and the IFI Crosscut with high quality data inputs and timeliness of data to support EM decision-making without the need for requesting data updates on a regular basis.

DOE retains sole performance measure authority and will establish and approve all performance measures, and set expected performance outputs and outcomes in annual direction and guidance.

4. Facilities Information Management System (FIMS): The Contractor shall maintain FIMS data and records, which are DOE's corporate real property inventory database for all lands, buildings, trailers, other structures and facilities, and real property in which DOE holds a legal interest in, or right to use, consisting of approximately 165 data elements to ensure the following:
- a. Keep FIMS data elements current, adhering to and in compliance with the most current DOE "FIMS User's Guide", and annual FIMS "Reporting Deadlines and Validation Guidance" requirements;
 - b. Keep FIMS data fields current throughout the real property asset lifecycle and align with the FIMS Data Dictionary;
 - c. Keep FIMS data consistent across DOE to enable comparable reporting and trend analyses;
 - d. Use FIMS data to meet FRPP requirements and the Department's DM and other real property reporting requirements including, but not limited to, the Agency's yearly financial statement;
 - e. Keep Real property records supporting FIMS data (source documentation) maintained;
 - f. Record annually the results of Asset Condition Assessment Survey (ACAS), Functional Assessments, and real property utilization assessments in FIMS.

- g. Coordinate Records management changes resulting in revisions to the FIMS User's Guide through appropriate governance;
- h. Archive FIMS information regarding real property assets that have been disposed of, including all related institutional controls; and
- i. Develop a completion report or equivalent document for each disposition project and include in FIMS ensuring the completion report/document describes, at a minimum, project activities, final facility status, cost information, and verification and validation that specific end-point criteria have been met.

The Contractor shall annually confirm a 90% or better confidence level of FIMS data accuracy, in accordance with the FIMS User Guide, and annually provided FIMS "Reporting Deadlines and Validation Guidance" requirements and take all actions necessary to correct identified discrepancies using an DOE approved corrective action plan for FIMS Validation score of "Red".

5. Acquisition of Real Property Assets: The Contractor shall support DOE, as requested, in any of the following activities:
 - a. Ensure that prior to Federal approval, real property acquisitions are supported by a mission need, a business case analysis, a current utilization survey, and life-cycle cost alternatives analysis;
 - b. Ensure construction or renovation of existing DOE-owned buildings above 5,000 gross square feet meet federal sustainability guiding principles and building efficiency requirements;
 - c. Ensure new solicitations for DOE-leased buildings above 10,000 rentable square feet meet building efficiency, performance, and management requirements;
 - d. Ensure facilities regardless of ownership comply with applicable federal metering requirements;
 - e. Ensure newly constructed or leased building area, regardless of ownership, with a predominant use of office or warehouse is offset by building area of an equivalent or greater size; and
 - f. Ensure newly constructed, renovated, or leased building area designated for office is reviewed and approved by a CRS to ensure use does not exceed the Department's office space design standard, an average of 180 square feet of usable area per person, regardless of predominant use of the building.
 - g. Forecast the acquisition AAIM, space bank CRS/RPO need guides
6. Disposition of Real Property Assets: When DOE identifies that a program mission or facility is no longer required, the contractor must initiate preparation of affected real property assets for disposition, including potential reuse for other missions (such as economic redevelopment or reuse). Disposition activities must be consistent with the guiding principles and core functions of the Department's integrated safety management and facility disposition policies. To prepare for disposition, the contractor must do the following:

- a. Identify real property assets that are likely to be declared as excess in a 10-year planning horizon and the anticipated year of excess. This information must be included in FIMS per the *FY 2017 Guidance for Evaluating the Department of Energy's Excess Facilities*, Revision 1, March 13, 2017.
- b. Develop a disposition baseline, including costs to disposition at the facility level, to assess and prepare the facility for disposition. Also costs for the maintenance, surveillance, repair, and any operations must also be reported in FIMS per the FY 2017 ECFWG Guidance.
- c. Technical, programmatic, and regulatory information is to be used in the disposition preparation and planning process. The disposition baseline must include the following information:
 - i. Surveillance and maintenance requirements needed to ensure the real property asset, including its systems, and stored hazardous materials and waste remain in a stable and known condition and that adequate protection is provided to the workers, the public, and the environment pending disposition;
 - ii. Identification and characterization of hazardous and radioactive materials, waste, and hazardous conditions of the real property asset; and
 - iii. Assessment and adjustment of the facility authorization basis, as necessary, to reflect conditions and activities pending disposition.
 - iv. Develop a disposition plan that identifies, assesses, and evaluates alternatives and integrates environmental, safety, and health requirements into disposition activities. The disposition plan should be tailored based on the disposition baseline and disposal method to be used (e.g., reuse, demolition, or decommissioning). The disposition plan shall contain a level of detail for what is going to be done, and how/when it will be done to ensure that scope, cost and schedule are reasonable and achievable based on the plan.
 1. Identify excess real property that is appropriate for economic development and, if any such property is identified, annually make a list of property available to potentially-interested parties.
 2. Determine whether to dispose of real property by sale or lease in accordance with 10 CFR Part 770, or to dispose of it through other processes;
 3. Notify DOE Headquarters organizations (Office of General Counsel, Office of Management, Office of the Chief Financial Officer, and EM) a minimum of 90 days before any disposal by sale or lease out-grant made under DOE authorities;
 4. Long term stewardship (LTS) and future land use considerations must also be considered when performing disposition planning. LTS is the primary responsibility of the Office of Legacy Management (LM), and contractors shall ensure that efforts and plans are coordinated and integrated with LM's requirements and policies; and
 5. Support DOE in updating FIMS data fields during real property asset disposition (e.g., identified as excess, transferred to another program office, placed into

inactive status, dismantled, or placed in LTS), and archive information regarding real property assets that have been disposed and add all real property related institutional controls to FIMS.

6. Adhere to Site protocols, if developed, or EMCBC Management System Description.
7. **Excess Asset/Facility Management:** Contractors responsible for disposition of excess assets or facilities shall:
 - a. Identify to DOE real property assets that are needed or no longer needed to meet mission needs;
 - b. Track annual costs for maintenance, repair and upkeep, at the asset level, for maintaining excess facilities once the asset is declared excess until final disposition and report this value in FIMS;
 - c. Provide estimated final disposition or decommissioning costs for all excess assets and any assets expected to be excessed in the next 10 years (at the asset level) and report that cost in FIMS per the annual “Guidance for Evaluating the Department of Energy’s Excess Facilities”, ensuring these costs are consistent with data in the EM IPABS Planning Module;
 - d. Assist DOE to screen real property assets in accordance with federal laws, regulations, and the Department’s internal process for screening real property assets prior to declaration of excess;
 - e. Identify to DOE excess real property that is appropriate for economic development and, if any such property is identified, annually list property available to potentially-interested parties within the FYSP;
 - f. Record planned disposition of real in FIMS, as well as in FYSP;
 - g. Assist DOE to determine whether to dispose of real property by sale or lease in accordance with 10 CFR Part 770, or to dispose of it through other processes;
 - h. Ensure physical controls, institutional controls, and other mechanisms to protect the workers, public and the environment are in place while performing disposition activities;
 - i. Assist DOE to dispose of unneeded real property assets declared excess to mission needs using demolition, sale, economic development, lease termination, interagency transfer, or other DOE-approved methods;
 - j. Assist DOE to perform real estate actions for out-grants in accordance with applicable environmental laws, regulations, and DOE directives, including:
 - k. Lease out-grants under the authority in 42 U.S. Code § 7256, commonly referred to as the “Hall Amendment”, must comply with the Joint DOE/Environmental Protection Agency Interim Policy Statement on Leasing, dated June 30, 1998;
 - l. Out-grants of excess property may be made if disposal by sale is not practical;
 - m. Out-grants of non-excess property may be made if the out-grant does not conflict with DOE missions; and
 - n. Out-grants by lease for economic development are subject to the Congressional notification requirements.

- o. Assist DOE in completing the transfer of excess real property assets in accordance with applicable Departmental directives, including prior written consent from the receiving entity; and
 - p. Assist DOE in disposing of excess contaminated real property assets in accordance with applicable Departmental directives and federal laws and regulations.
- 8. Sustainment of Real Property Assets: Contractor shall establish a cost-effective sustainment program to keep existing operational, excess, and those facilities transitioning from operational to shut down in an acceptable safe and stable condition, functional, or sustainable in support of its current operational status or mission. Contractor sustainment program must include:
 - a. A systematic management process for planning and budgeting for known future cyclical maintenance, repair, and renovation requirements for major building components or infrastructure systems.
 - b. A mechanism to track direct and indirect funded expenditures for maintenance and repair and renovation at the asset level.
 - c. The Contractor shall support DOE, as requested, in any of the following activities:
 - i. Maintain real property assets, including the mechanical and electrical systems that are installed as part of basic building construction and are essential to the normal functioning of the facility, in a condition suitable for its intended use;
 - ii. Establish a Maintenance Management Program that promotes operational and worker safety, public health, environmental compliance, and cost effectiveness while meeting the program missions. See Section 5, Maintenance, below for additional requirements of a compliant Maintenance Management Program;
 - iii. Develop five-year forecast (by fiscal year) as part of the FYSP and update annually to identify financial investments for sustainment of real property assets to support DOE strategic plans, program guidance, and Departmental performance targets. Include consideration for desired level of service, remaining service life, current Asset Condition Assessment Surveys (ACAS), EISA energy and water evaluations, utilizations surveys, the mission dependency of the asset, and projected funding for DM reduction. The EISA assessments for each operating covered facility must be performed at least once during any four-year period;
 - iv. Report asset level annual required maintenance in FIMS for the upcoming fiscal year, including the estimated fully burdened costs of predictive and preventive maintenance and repair activities;
 - v. Conduct tailored Asset Condition Assessment Survey (ACAS) for each real property asset assigned, to determine the need for preventive or remedial action, using industry standard graded approaches tailored to the inspection type and frequency that aligns with asset ownership, use, and mission dependency as follows:

1. Perform physical Asset Condition Assessment Survey (ACAS) on each real property asset (including operational and excess facilities) at least once every five-year period or other risk-based interval as approved by EM;
 2. Perform more frequent assessments for real property assets (including operational and excess facilities) identified as mission unique or critical, or assets that pose an increased risk to life safety or the environment, or as mandated by federal, state or local codes;
 3. Determine the current physical condition of each real property asset, its estimated time to failure, and the optimum period for repairs and replacement based on engineering and maintenance analyses;
 4. Estimate the costs to correct deficiencies identified during the ACAS using the DOE Condition Assessment Information System (CAIS) or another nationally recognized cost estimating system that is formatted in UNIFORMAT II and based on annually updated unit cost data (e.g. RS Means; Building News; Craftsman Book Company; Richardson General Construction Estimating Standards). Cost estimates must be updated annually and include contractor indirect costs;
 5. Categorize deficiencies as either Deferred Maintenance (DM) or Repair Needs (RN). Document and report DM and RN cost estimates consistent with Federal Accounting Standards Advisory Board requirements and Federal Real Property Council reporting guidance, respectively; and
 6. Regardless of the extent of tailoring (in schedule, scope and comprehensiveness) the contractor must maintain a high degree of confidence in their real-time understanding of facility conditions and risks and ensure that EM Field Office Managers are in concurrence with their risk acceptance perspectives.
- d. Perform a Functional Assessment of each operating real property asset to determine an asset's current physical condition and its capability to meet mission requirements at least once during any five-year period or other risk-based interval as approved by the cognizant PSO based on industry leading practices, voluntary consensus standards, and customary commercial practices;
 - e. Recommission covered facilities at least once during any four-year period, tailored to the size and complexity of the building and its systems and components, to optimize and verify performance of existing systems; and
 - f. Record annually the results of ACAS, Functional Assessments, and real property utilization assessments in FIMS.
9. **Maintenance of Real Property Assets:** The Contractor shall develop and implement a compliant Maintenance Management Program to ensure real property assets are maintained in a manner that promotes operational and worker safety, public health, environmental compliance, and cost-effectiveness while meeting the program missions using a balanced

approach that not only sustains the assets, but also provides for their safe upkeep while awaiting ultimate disposition for EM excess facilities.

Contractor organizations responsible for hazard category 1, 2, or 3 nuclear facilities, as defined by DOE Standard 1027-92 must develop and implement a nuclear maintenance management program (NMMP) through tailored application (e.g., graded approach) of DOE O 433.1, *Maintenance Management Program Requirements for DOE Nuclear Facilities*.

For other facilities, voluntary consensus standards, including ANSI/EIA – 649, National Consensus Standard for Configuration Management or DOE standards must be applied as determined by the responsible DOE element.

The Maintenance Management Program shall include the following:

- a. Ensure real property asset availability for planned use or disposition using preventive and predictive maintenance and repairs;
 - b. Asset Condition Assessment Surveys (ACAS) of the real property assets;
 - c. A work control system, management of deferred maintenance (DM), a method to prioritize, and systems to budget and track all maintenance expenditures (including DM, repair needs (RN), etc.);
 - d. Identification of 5-year maintenance and repair requirements (sustainment) and funding for DM reduction;
 - e. DM estimates, similar to deficiency estimates and RN, will be based on nationally recognized cost estimating systems such as the DOE Condition Assessment Information System (CAIS), or other nationally recognized cost estimating systems that are formatted in UNIFORMAT II and based on annually updated unit cost data (e.g. RS Means; Building News; Craftsman Book Company; Richardson General Construction Estimating Standards). DM Cost estimates must be updated annually and include contractor indirect costs.
 - f. A computerized maintenance management system (CMMS) that includes;
 - i. Preventative/Scheduled/Warranty Work
 - ii. a master equipment list;
 - iii. maintenance service levels;
 - iv. A method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies as either DM or RN;
 - v. Management of the DM backlog;
 - vi. A method to prioritize maintenance work
10. Bridge and Tunnel Management (DOE Order 437.1); The Contractor shall comply with all requirements outline in DOE O 437.1, and its attachments when developing and implementing a documented safety, function, and efficient management program for all DOE bridges, culverts, and tunnels in support of DOE missions through regular, comprehensive

inspections and evaluations using resources in an effective and efficient manner and in compliance with the governing laws and regulations. Establish and maintain a documented bridge and tunnel management approach satisfying Federal regulations, DOE directives, and industry standards and practices to ensure the following:

- a. Inspections. Ensure timely inspections, assessments, studies, and evaluations of each bridge, culvert, or tunnel as described in Attachment 2 are planned, conducted, and documented.
- b. Load Rating and Posting.
 - i. Maintain a current load rating for each active bridge, tunnel, and culvert using the criteria and methods in Attachment 2. At-grade roadways in tunnels are exempt from load rating.
 - ii. When necessary, post a bridge, tunnel, or culvert for load restrictions or restrict access using the criteria in Attachment 2.
- c. Scour Evaluation. Ensure each active bridge and culvert that crosses a waterway is evaluated for vulnerability to scour or stream instability from floods using the criteria and methods in Attachment 2.
- d. Seismic Vulnerability Evaluation. Ensure each bridge is evaluated for vulnerability to seismic events and the need for seismic retrofitting using the criteria in Attachment 2.
- e. Vehicle Traffic Volume Data Collection.
 - i. For each active vehicle bridge:
 - 1. Determine the Average Daily Traffic (ADT) and the percentage that is truck traffic. Do not include vans, pickup trucks, and other light delivery trucks in this percentage. Update every five (5) years.
 - 2. Maintain a forecasted average daily traffic for the route at least 17 years but no more than 22 years from the year in which the forecast is made. The intent is to provide a forecast of the ADT 20 years in the future.
 - ii. For each active vehicle tunnel, determine the Annual Average Daily Traffic (AADT) and the Annual Average Daily Truck Traffic (AADTT). Do not include vans, pickup trucks, and other light delivery trucks in this percentage. Update every five (5) years.
- f. Use of Qualified Personnel.
 - i. Ensure each person performing an inspection or evaluation meets the qualification requirements specific to the inspection or evaluation conducted and understands the duties of the role he or she is expected to perform as described in Attachment 2.

ii. Document individual personnel qualifications including appropriate education, experience, licensure, and certifications, and current training. Individuals must complete refresher training at least every five years.

g. Quality Management.

i. Establish quality management procedures or requirements necessary to produce accurate and consistent bridge inspections conforming with inspection standards and criteria; inspection plans; quality control procedures; DOE policy; and Federal and State requirements.

ii. Establish quality management procedures or requirements necessary to ensure that evaluation products such as calculations, reports, and studies are complete, accurate, and properly checked in accordance with applicable industry standards.

iii. Establish quality management procedures or requirements necessary to ensure that information and data supporting the Department's external reporting or implementation of bridge and tunnel management requirements is validated and provided in a timely manner.

h. Records and Reporting. Ensure records, reports, and data are prepared, maintained, and submitted using the criteria in Attachment 2.

I. Inventory and Asset Management.

i. Integrate requirements for bridge and tunnel management with existing operating and management procedures for real property. Document any locally established policies, procedures, or inspection intervals for bridges, tunnels, or culverts.

ii. When available resources are inadequate to maintain an acceptable level of bridge, culvert, or tunnel safety, act to impose lane or load restrictions, or closures.

iii. Establish, document, and implement protocols for responding to a critical finding. Establish, document, and implement protocols for managing permit loads.

iv. Establish, document, and implement bridge closure and re-opening procedures. Once closed, a bridge may not be reopened until repairs are complete and a qualified engineer determines that the bridge is safe and if necessary, posted for load restrictions.

v. For railroad bridges, establish, document, and implement procedures and issue instructions to personnel responsible for train operations to prevent operation of equipment that would exceed the capacity of the bridge.

H.88 RECORDS MANAGEMENT

The Contractor shall serve as the Record Custodian for Federal records (regardless of media) generated/received at the WIPP including all contractors/subcontractors. All records shall be managed in electronic format (born digital) to the fullest extent possible. Historical records obtained from a predecessor contractor must also be managed in electronic format (digitized) in accordance with NARA requirements. All records shall be managed in accordance with 44 U.S.C., Chapters 21, 29, 31, 33, and 35; 36 CFR Chapter XII, Subchapter B, *Records Management*; DOE Order 243.1, Records Management Program, applicable NRC requirements, National Archives and Records Administration (NARA) requirements and bulletins and any other DOE requirements.

The Contractor shall be responsible for all records management and document control activities, including, but not limited to: tasks associated with creation/receipt, maintenance, storage/preservation, protecting, scheduling, indexing and dispositioning active and inactive records (including e-mails); managing classified records, Controlled Unclassified Information and Unclassified (CUI), Unclassified Controlled Nuclear Information (UCNI), Official Use Only (OUO) (as applicable); providing all employees and subcontractors with records management training; retrieving of records; supporting records management data calls from the National Archives and Records Administration (NARA) and DOE; and supporting ongoing Freedom of Information Act (FOIA), Privacy Act, Energy Employees Occupational Illness Compensation Program (EEOICPA), the former worker medical screening program, the Chronic Beryllium Disease Prevention Program, congressional inquiries, legal discoveries and other record requests.

Records Management Program Plan

The Contractor shall submit a Records Management Program Plan that documents the records lifecycle (creation/receipt, maintenance/use and disposition), including, but not limited to: electronic records, digital signature process, email, classified, audiovisual, quality records, historical records, essential records, inventory and file plans and disposition (transfer and destruction). The Contractor shall submit the plan within 60 days of the Notice to Proceed and review, revise as necessary, submit any revisions for CO approval, and (once approved) execute the Records Management Program Plan (see Attachment J-6, Contract Deliverables List). The Plan shall be submitted annually thereafter if/when changes occur; the submittal shall clearly document the changes made (e.g., track changes).

Electronic Records

The Contractor shall develop and implement records management controls to ensure that the identification, maintenance, and disposition of all records, including email, are managed utilizing an ERMS that meets the requirements of NARA's Universal Electronic Records Management (UERMS) requirements.

The Contractor shall manage records contained in Electronic Information Systems (EIS) by incorporating recordkeeping controls in the system or exporting the records into the ERMS in accordance with 36 CFR Part 1236, *Electronic Records Management*. The Contractor shall

submit a list of EIS' to DOE annually utilizing the format provided by DOE (see Attachment J-6, Contract Deliverables List), including contractor-owned records.

Ensure records controls are maintained when using commercial or government cloud environments, managed services, or on-premise environments.

Metadata for a record must, where possible, consist of a description of the content of the record; the structure of the record (form, format, and relationships between record components); the business context in which the record was created, relationships with other records and metadata, identifiers and other information needed to retrieve the record, and the business actions and events involving the record throughout its lifecycle.

To protect records against technological obsolescence, regardless of the storage environment and media, the contractor must:

- 1) Determine if the NARA-approved retention period for the records will be longer than the life of the system. If so, agencies must migrate the records and their associated metadata before retiring the current system.
- 2) Ensure hardware and software can retain the electronic records' functionality and integrity regardless of the storage environment. To retain functionality and integrity, contractor must:
 - (a) Keep the records in a usable format until their authorized disposition date. If records must be converted for migration, records must be maintained and disposed of in the authorized manner after conversion;
 - (b) Ensure forms are created using digital fillable fields and digital signatures in accordance with DOE O 206.2, *Identity, Credential, and Access Management (ICAM)*, current version. If operations prohibit the use of electronics in the field, the temporary document must be digitized as soon as possible;
 - (c) Plan for technology obsolesce, and ensure updated hardware and software remains compatible with current data formats as necessary and data is preserved as a federal record until disposition requirements are met;
 - (d) Maintain a link between records and associated metadata when converting or migrating. This includes capturing relevant associated metadata at the point of migration (for both the records and the migration process);
 - (e) Ensure verification of successful records transfers (including metadata) after migration.

Access rights and permission rules for electronic records should be based on the activity or business function related to the records.

Dispose of temporary electronic records in accordance with assigned, approved schedules, including backup or working copies in any format, to protect sensitive, proprietary, or national security information and prevent access or reuse in the future.

Manage email records in an electronic format, along with associated metadata, using GRS 6.1, Email Managed under a Capstone Approach, including name of sender and all addressees, date and time email sent and received, in addition to contacts, calendars, mailbox folders and attachments. Email (in the native environment) is managed as a role-based record in its entirety. Email messages must also be captured as program or project records using appropriate schedules.

- 1) Official business must be conducted using authorized Federal email accounts. Business conducted through non-official accounts must be captured on an official Federal email account within 20 calendar days of creation or receipt.
- 2) Official email must be captured and handled as a federal record, regardless of the number of official accounts an employee may be assigned.
- 3) Email records determined to be of permanent value must be transferred to NARA as an electronic record in the current NARA approved format.
- 4) Documented procedures must be in place for systems that can produce, manage, and preserve email records in an acceptable electronic format until disposition. Additionally, systems must support the implementation of policy requirements outlined in this order, to include lifecycle management, preservation, security, integrity, and the accessibility of email records throughout their lifecycle.

Instant messaging, text messages, and chat messages are authorized for Federal business use as long as they are on an official government owned or approved network and captured. Non-government electronic communication devices that cannot be or are not captured or transferred to an official government network or system are not authorized for official government business.

Public/external social media platforms or alternate tools/applications used for official government business that result in the creation of a Federal record require appropriate capture and management in accordance with a NARA approved record schedule.

Capture and manage records created or received via public/externally-owned websites and portals used for Departmental business. Manage website administration, operations, and maintenance records in accordance with a NARA approved record schedule.

Records Ownership

Except for those defined as Contractor-owned (in accordance with DEAR 970.5204-3, *Access to and Ownership of Records*, see Section I), all records (see 44 U.S.C. 3301 for the statutory definition of a record) acquired or generated by the Contractor (and subcontractors) in

performance of this Contractor including, records from a predecessor contractor (if applicable) and records described by the Contract as being maintained in Privacy Act systems of record (Section H clause, *Privacy Act System of Records*) shall be the property of the Government.

Essential Records Program (formerly known as Vital Records Program)

The Contractor shall establish and sustain an essential records program to ensure continuity of operations (COOP) during and after an emergency as prescribed by laws, regulations, and directives, that ensures DOE makes and preserves records of the Department's organizations, missions, functions, policies, decisions, procedures, and essential transactions. The program must be designed to identify records, regardless of format, that specify how DOE will operate in an emergency or disaster and identify and protect legal and financial rights records. Ensure essential records are accessible per the COOP guidance in the Federal Continuity Directive 1 (FCD 1), Federal Executive Branch National Continuity Program and Requirements. See 44 U.S.C. 3101, 36 CFR Part 1223, *Managing Vital Records*.

Ensure essential records inventories are added as attachments or appended to the COOP plan. Provide essential records information to appropriate emergency management officials and/or pre-position records where appropriate. A copy of the Essential Records Program and Inventory shall be provided to DOE annually for approval (see Attachment J-6, Contract Deliverables List).

Creation/Receipt

The Contractor shall develop and implement recordkeeping requirements that reflect adequate and proper documentation of all Contractor (and subcontractor) records generated/received (regardless of media) in the performance of the contract in accordance with all prescribed laws, regulations, directives, NARA bulletins or DOE requirements.

Inventory and File Plan

The Contractor shall conduct periodic records inventories in order to develop and maintain up-to-date organizational inventories, file plans and EIS' that provide for the identification, location, arrangement, assignment of disposition authority and retrieval of all categories (record series) of records created and received in performance of this contract. The Contractor shall utilize a DOE approved format and shall submit to DOE the site-wide File Plan within six months of written notice to proceed, for review/approval by DOE. The plan shall be updated and submitted annually thereafter when changes occur; the submittal shall clearly document the changes made. (see Attachment J-6, Contract Deliverables List)

Maintenance /Use

The Contractor shall maintain and preserve all records, including the historical records collection (paper and electronic) stored on-site, at a Federal Record Center (FRC) and in the ERMS.

Quality Assurance Records

The Contractor shall ensure records identified as Quality records under the American Society of Mechanical Engineers (ASME) Nuclear Quality Assurance (NQA) 1, or a DOE approved industry standard are managed to meet the requirements of the approved standard and 36 CFR Chapter XII, Subchapter B.

Privacy Act Records

The Contractor shall ensure records that contain personal information retrieved by name, or another personal identifier, are maintained in Privacy Act Systems of Records, in accordance with FAR 52.224-2, *Privacy Act*, and DOE O 206.1, *DOE Privacy Program*.

Classified Records

The Contractor shall protect and handle classified information and critical information in accordance with applicable laws, regulations, policies, and directives. Classified documents may be processed electronically so long as the computer systems meet all classified security requirements. Until the required computer systems are available to copy, log, process, transmit, and/or store classified documents, they shall be processed as hard copy.

Records Requests

The Contractor shall respond to records management data calls by NARA and DOE as requested, and process record requests for the FOIA, the Privacy Act, the former worker medical screening program, the Chronic Beryllium Disease Prevention Program, congressional inquiries, legal discoveries and other record requests. Regardless if the contractor processes the request directly to the requestor or submits to DOE for final response, the contractor is responsible for maintaining a “copy” of what was provided. The copy must be scheduled appropriately.

The Contractor shall respond to Energy Employee Occupational Compensation Act (EEOICPA) requests in accordance with the clause in Section H, *Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000*.

Records Disposition

The Contractor shall submit a Records Disposition Plan (see Attachment J-6, Contract Deliverables List), which shall include processing of all the transfer of records to storage (e.g., on-site, Federal Records Center prior to December 31, 2022*) and the destruction process for records and information content. The Contractor shall disposition all records, including historical/legacy in accordance with the NARA-approved Records Disposition Schedules and applicable federal laws and regulations. Disposition activities include transferring permanent records to NARA (in electronic format), transferring of paper records to a FRC, and/or destruction once retention has been met and proper approvals obtained. Transfer of records to a FRC and NARA, as well as the use of a commercial storage facility requires DOE RMFO approval. Prior to any destruction, the Contractor shall submit the records destruction certificate(s) to the DOE RMFO; the RMFO will review/approve, as well as obtain the approval of DOE Legal Counsel.

*Note: In accordance with M-19-21, *Transitioning to Electronic Records*, all permanent records must be created and maintained electronically to the fullest extent possible

Document Control

The Contractor shall develop, implement and maintain sound document control systems and processes ensuring efficient tracking, retrieval, revision control and distribution of documents, including drawings.

H.89 TASK ORDERING PROCEDURE (APPLIES TO IDIQ CLIN ONLY)

The Administering Contracting Officer will determine Task Order ordering procedures if any Task Orders are ordered.