

SECTION H
SPECIAL CONTRACT REQUIREMENTS

PART 1 – THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS AND CERTIFICATIONS

The Representations, Certifications, and Other Statements of Offeror for this contract as completed by the Contractor are hereby incorporated in this contract by reference.

H.2 MODIFICATION AUTHORITY

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

- (a) Accept nonconforming work;
- (b) Waive any requirement of this contract; or
- (c) Modify any term or condition of this contract.

H.3 EMPLOYEE COMPENSATION: PAY AND BENEFITS

- (a) Contractor Employee Compensation Plan

The Contractor shall submit by close of contract transition, a Contractor Employee Compensation Plan 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.

- (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 including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 970.3102-05-6; Compensation for Personal Services (Total Compensation System). 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 meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, 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) Appraisals of Contractor Performance

DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.

(d) Reports and Information

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

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(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 Central Contractor Registration (CCR) per FAR 52.204-10.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
- (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.

(e) 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.

- (i) **Pay.** Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by DM Petroleum Operations Company or at least the first year of the term of the Contract.
- (ii) **Pension and Other Benefits.** The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by DM Petroleum Operations Company. Comparability of the total benefit package shall be determined by the CO 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 and applicable law.

- (2) **Non-Incumbent Employees** are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. 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**
 - (i) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
 - (A) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.
 - (B) Any proposed major compensation program design changes prior to implementation.
 - (C) An Annual Compensation Increase Plan (CIP).
 - (D) 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 indicated).

- (E) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).
 - (ii) The Contracting Officer's approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel as indicated in (e)(3)(i)(D) above. The base salary reimbursement level for the top contractor official establishes the maximum allowable 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.
 - (iii) Severance Pay is not payable to an employee under this Contract if the employee:
 - (A) Voluntarily separates, resigns or retires from employment,
 - (B) Is offered employment with a successor/replacement contractor,
 - (C) Is offered employment with a parent or affiliated company, or
 - (D) Is discharged for cause.
 - (iv) 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.
- (f) 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 for either Incumbent Employees or Non-Incumbent Employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
 - (2) Cost reimbursement for Incumbent Employee and Non-Incumbent Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved Employee Benefits Value Study and an Employee Benefits Cost Survey Comparison as described below.

- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor as part of its performance self-assessment described in paragraph (d) (4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
 - (i) An Employee Benefits Value Study (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,
 - (ii) An Employee Benefits Cost Study Comparison, annually each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey 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.
- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.
- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.

- (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
 - (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
 - (9) Cost reimbursement for 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.
- (g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs.
- (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the IRC and ERISA.
 - (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable laws and regulations.
 - (3) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
 - (4) 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 which provides credit for service not performed under a DOE cost-reimbursement contract.
- (h) 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 post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans. The Contractor shall carry

over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.

- (2) Except for Commingled plans in existence as of the effective date of this Contract, each pension plan covering contractor employees at designated DOE and contractor facilities shall be a separate pension plan as defined below. When appropriate, Commingled plans shall be converted to separate plans at the time of new contract award or the extension of a contract.
- (3) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.
- (4) DOE approval is required for each newly adopted pension plan or for any changes to Commingled pension plans or Taft-Hartley pension plans.
- (5) Each contractor pension plan shall be submitted to an annual, full-scope audit by an outside independent organization and the resulting report, submitted to DOE, must provide the accounting details specified in ERISA Sections 103 and 104.
- (6) For existing Commingled plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan.
- (7) 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.
- (8) The Contractor shall comply with the requirements of ERISA and any other applicable laws to the fullest extent practical, even if a specific pension plan is exempt from ERISA.
- (9) Proposed pension plan changes will be evaluated by DOE, with approval/disapproval based on the merits of each proposed change, including but not limited to evaluation of the following:
 - (i) Total compensation.
 - (ii) Pension benefit surveys published by the Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
 - (iii) Retirement studies published by consulting firms, educational institutions, or policy groups.

- (iv) Software models developed by qualified actuaries.
- (10) The Human Resources Management Plan shall include the following:
- (i) A Pension Management Plan (PMP) discussing the Contractor's plans for management and administration of all pension plans consistent with the terms of this contract. The PMP shall be updated and submitted to the Contracting Officer in draft annually no later than 45 days after the last day of the Plan year along with its draft actuarial valuation.
 - (ii) Within thirty (30) days after the date of the submission, appropriate Contractor representatives shall meet with the Contracting Officer to discuss the Contractor's proposed draft annual update of the PMP to specifically discuss any anticipated changes in the projected pension contributions from the prior year's contributions and any discrepancies between the actual contributions made for the most recent year preceding that meeting and the projected contributions for that year which the Contractor had submitted to the Contracting Officer the prior year. The annual revision of the PMP shall include:
 - (A) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s).
 - (B) If the actuarial valuation submitted pursuant to the annual PMP update indicates that the sponsor of the pension plan must impose pension plan benefit restrictions, the Contractor shall provide the following information:
 - 1) The type of benefit restriction that will take place,
 - 2) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction, and
 - 3) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.

- (C) A detailed discussion of how the Contractor intends to manage the pension plan(s) to maximize the contribution predictability (i.e. forecasting accuracy) and contain current and future costs, to include rationale for selection of all plan assumptions that determine the required contributions and which impact the level and predictability of required contributions. The Contractor is required to annually establish a long term (e.g. five year) plan that outlines the projected retirement plan costs, and any planned action steps to be taken to better manage predictability. The contractor must also share the following information with the Department during the meeting:
- 1) Strategy for achieving and maintaining fully-funded status of the plan(s)
 - 2) Investment policy statement for the plan, with any recent updates
 - 3) Results of recent asset liability studies (required to be performed every 3 years or after a significant event) including rationale for maintaining current asset allocation strategy.
 - 4) Comparison of budget projections submitted to the Department to actual contributions
 - 5) Any recent reports, findings, or recommendations provided by plan's investment consultant.
 - 6) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years).
- (D) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.

- (11) 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.
- (i) Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans
 - (A) 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. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.
 - (B) 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.
 - (j) 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.

(k) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to benefits, plan design, or funding methods for a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Management Plan and 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:
 - (i) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (ii) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
 - (iii) 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;
 - (iv) the Summary Plan Description; and,
 - (v) any such additional information as requested by the Contracting Officer.
- (2) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of such special programs and other changes on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
- (3) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:
 - (i) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,
 - (ii) provide the dollar estimate of savings or costs, and

(iii) provide the basis of determining the estimated savings or cost.

(l) 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 dispose of such liabilities through a competitive purchase of annuities. Insurance companies bidding for such business shall satisfy Department of Labor requirements.
- (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 DOE assets assigned to a spun-off or terminating plan shall be placed in a high-yield, fixed-income portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's AA.

(m) Terminating Plans

- (1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without notifying the Department 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. Insurance companies bidding for this business shall satisfy Department of Labor standards. Otherwise, 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 the same day as the contractor notifies the IRS of the plan termination, all DOE assets will be placed in a high-yield, fixed-income portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's AA.
- (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.

(n) 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.

(o) 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 Order, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the contractor as the plan sponsor.
- (9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a plan termination basis.

H.4 LABOR RELATIONS

- (a) The Contractor shall respect the right of employees 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.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the

Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.

- (c) 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, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

H.5 NO THIRD PARTY BENEFICIARIES

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

H.6 WORKER'S COMPENSATION INSURANCE

- (a) The Contractor shall maintain workers' compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the Contracting Officer and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.
- (b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the Contracting Officer.
- (c) The Contractor shall submit to the Contracting Officer an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the Contracting Officer. The Contractor's self-evaluation shall discuss:
 - (1) Periodic audits of claims servicing units; and,
 - (2) The reasonableness of self-insurance reserves and methods and assumptions used to closeout claims or losses to present value.

- (d) The Contractor, if it is a state institution covered under a corporate workers' compensation arrangement, shall provide the Contracting Officer with a copy of the account statements including deposits, earnings, payments, losses, and administrative fees by the Contractor's financial institution on no less than an annual basis.
- (e) 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.

H.7 WORKFORCE TRANSITION

- (a) Right of First Refusal. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees, except as stated in paragraph (b) below, who, as of the date of Contract award, are in good standing and who hold regular appointments and are engaged in performance of work within the scope of work under this Contract. Individuals who hold regular appointments are individuals who are employed for an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week, but more than 20 hours per week.
- (b) Discretionary Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the right of first refusal set forth in the Workforce Transition clause is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals permanently assigned in the positions listed in Section J, Attachment TBD. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.
 - (1) For those positions listed in Section J, Attachment TBD, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
 - (2) Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

H.8 POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

- (a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the SPR (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 sites/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 the same day as the contractor notifies the IRS of the spinoff, all DOE assets assigned to a spun-off plan shall be placed in a high-yield, fixed income portfolio until the successor trustee is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's "AA."
- (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 PERFORMANCE GUARANTEE AGREEMENT

The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the contract in Section J, Attachment I.

If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and severable liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.10 CONTRACTOR PRESS RELEASES

The DOE policy and procedure on news releases requires that all Contractor press releases be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned press releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

H.11 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS

Pursuant to Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well being of its Federal employees and contractor service providers. As a service provider at a DOE facility you are urged to assist us in our efforts. Sustainable acquisition or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:

- Alternative Fueled Vehicles and Alternative Fuels
- Biobased Content Products (USDA Designated Products)
- Energy Efficient Products
- Non-Ozone Depleting Alternative Products
- Recycled Content Products (EPA Designated Products)
- Water Efficient Products (EPA WaterSense Labeled Products)

You should familiarize yourself with these information resources:

- Recycled Products are described at <http://epa.gov/cpg>
- Biobased Products are described at <http://www.biopreferred.gov/>
- Energy efficient products are at <http://energystar.gov/products> for Energy Star products and FEMP designated products are at <http://www.eere.energy.gov/femp/procurement>
- Environmentally Preferable Computers are at <http://www.epeat.net>
- Non-Ozone Depleting Alternative Products at <http://www.epa.gov/ozone/strathome.html>
- Water efficient plumbing fixtures at <http://epa.gov/watersense>

In the course of providing services at the DOE site, if your services necessitate the acquisition of any of these types of products, it is expected that you will acquire the sustainable, environmentally preferable models unless the product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. While there is no formal reporting, DOE prepares a sustainable acquisition annual report and you may be asked to share information for our report.

H.12 TRANSITION ACTIVITIES

- (a) During the transition period, as specified in the clause in Section F entitled “Period of Performance,” the Contractor shall perform those activities that are necessary to transition the work from the incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (s) provides for an orderly transfer of resources, responsibilities, and accountability from the incumbent Contractor; and (3) allows the Contractor to perform the work in an efficient, effective, and safe manner. The Contractor is responsible for providing all necessary personnel and logistical support (office space, computers, telephone, etc.) during the transition period, unless specifically directed otherwise by the Contracting Officer.
- (b) The Contractor shall submit a transition plan consistent with the approach in the proposal as the basis for beginning the transition activities immediately upon award of the contract. The Contractor shall submit a transition plan and budget to the Contracting Officer for approval within 7 days after award of the contract.
- (c) After completion of the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by the Contracting Officer, the Contractor shall notify the Contracting Officer in writing that it is ready to assume full responsibility for the work. The Contractor shall assume full responsibility for the work upon the date specified in writing by the Contracting Officer.

- (d) The transition plan shall include a schedule of major activities, and address as a minimum:
- (1) Communication process among the Contractor, incumbent Contractor, and DOE;
 - (2) Identification of key transition issues and milestones;
 - (3) Identification of a transition team (inclusive of consultants and teaming members, if any);
 - (4) Integration of work packages (direct and indirect) and budgets from incumbent Contractor;
 - (5) Approach to minimizing impacts on continuity of operations;
 - (6) Dispute Resolution;
 - (7) Assumption of SPR related programs and projects;
 - (8) Comprehensive human resource management plan as described in the Section H clause entitled “Employee Compensation: Pay and Benefits”;
 - (9) Implementation of proposed management systems (e.g., Project Management, Integrated Safety Management, Accounting, Procurement, Property, Budget and Planning);
 - (10) Assumption of all ES&H responsibilities, functions, and activities;
 - (11) Identification and prioritization of issues after transition; and
 - (12) A detailed cost breakdown by transition activity (include cost breakdown as an appendix to the plan).

H.13 TECHNICAL DIRECTION – DEAR 952.242-10 (DEC 2000)

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer’s Representative (COR). The term “technical direction” is defined to include, without limitation:
- (1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

- (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.
- (b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that—
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must—
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or

- (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

H.14 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan, submitted by the Contractor consistent with the provisions of the clause entitled "FAR 52.219-9 Small Business Subcontracting Plan" in Section I, and approved by the Contracting Officer is incorporated and made a material part of this contract as an Attachment to Section J.

Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual subcontracting plan which shall establish subcontracting goals, as described in paragraph (d)(1) and (2) of Section I clause entitled " FAR 52.219-9 Small Business Subcontracting Plan," to remain in effect for each fiscal year. The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this contract.

H.15 CYBER SECURITY REQUIREMENTS

- (a) General Computing System Use Policies. DOE policies as well as the Information Technology (IT) policies defined at the SPR are intended to protect computer hardware, software, and data from unauthorized access, intentional compromise or destruction, and inadvertent damage. All users including contractor staff are responsible for the protection of computer resources located in their work areas and those computer resources assigned by the SPR to the user. The following computer security requirements apply to all computer users at the SPR.
- (b) Computer Access Request (Including Foreign National Special Requirements). Before any request can be processed the individual needs to have a DOE ID badge or PIV (Personal Identification Verification) card. In order to be assigned a user ID and be allowed access to the SPR computers and network, the person's manager must submit a computer access request or by using the SPR User Management System. The person must also complete the SPRPMO User Certification For Protection of DOE Sensitive Information. If the individual is a foreign national they must fill out a "Foreign National Request" through the Security Department and be properly vetted before being granted access to SPR information systems or data.
- (c) Password. Your assigned login ID and password are for your use only. Your password is not to be disclosed to anyone. You are responsible for all computer work processed under your assigned logon ID and password in accordance with DOE policy.

- (d) **User Responsibilities and Prohibited Use.** Users must comply with End-User Rules of Behavior defined in Appendix E of the applicable System Security Plan (SSP) for the SPR system being accessed. Users must attend annual computer security awareness briefings.
- (e) **Personally Identifiable Information (PII).** Protected PII shall not be stored or transmitted on portable/mobile devices or on removable media, or remotely access Protected PII on DOE systems without specific approval of the Designated Approval Official.
- (f) **Remote Access.** Users shall only do remote access to SPRPMO systems using two-factor authentication with SPRPMO supplied credentials. Remote access to protected PII on government systems must be approved in writing by the Designated Approval Authority. Remote access is any access to an organizational information system by a user (or an information system) communicating through an external, non-organization-controlled network (e.g., the Internet).
- (g) **Restriction on the Use of Portable/Removable Media.** SPRPMO policy is to restrict the use of portable and removable media to access, collect, create, process, transmit, disseminate, or store SPR information within and outside SPR security areas. Use of portable and removable media to store or transfer SPR electronic information will be considered the exception rather than the normal operating procedure. Only SPR-issued portable and removable media are allowed to be connected to SPR information systems or networks. Use of Personally Owned Devices (PODs) are not allowed on SPR information systems without prior written approval of the ISSM (Information System Security Manager) or the SPR Designated Approval Official.
- (h) **Restriction on the Use of Cellular Technology.** SPRPMO policy is to restrict the use of cellular wireless communications technology to access SPR information system assets or data. Cellular technology must be incapacitated or disabled before connecting to any SPR information system or network.

H.16 SEPARATE CORPORATE ENTITY

The Contractor under this contract shall be a separate corporate entity from its parent company(s). The separate corporate entity may be a partnership or joint venture. The separate corporate entity must be set up solely to perform this contract, and shall be totally responsible for all contract activities. The separate corporate entity shall perform no other commercial work or work for other Government agencies except as may be authorized under the terms of this contract. The Contractor shall not utilize or otherwise divert contract employees to other corporate work except as may be authorized under the terms of the contract or as otherwise authorized by the Contracting Officer.

H.17 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS

Responsible Corporate Official

- (a) The Contractor has provided a guarantee of performance from its parent(s) company(s) in the form set forth in Section J Attachment entitled, "Performance Guarantee Agreement." The individual signing the "Performance Guarantee Agreement" for the parent company(s) should be the Responsible Corporate Official.
- (b) 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.

Responsible Corporate Official

Name: _____

Position: _____

Company/Organization _____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

- (c) Should the Responsible Corporate Official or their contact information change during the period of the contract, the Contractor shall promptly notify the Contracting Officer 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:

Name: _____

Position: _____

Company/Organization _____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

Should any change occur to the Corporate Board of Directors or their contact information during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

H.18 HOME OFFICE EXPENSES

Home office expenses, whether direct or indirect, relating to activities of the Contractor are unallowable, except as otherwise specifically provided in the contract or specifically agreed to in writing by the Contracting Officer.

H.19 PROJECT CONTROL SYSTEM

- (a) In the performance of this Contract, the Contractor shall establish, maintain and use a system for the management and control of projects, which meets the requirements set forth in the Contract. The systems shall be cost-effective and of a level of detail commensurate with management principles necessary for management and control of the project. Specific project control systems guideline requirements and time frames for implementation of these requirements shall be transmitted to the Contractor by the Contracting Officer. The systems shall be reviewed by the Contracting Officer, or duly authorized representative(s), for adequacy in meeting the designated requirements. As part of the review procedure, the Contractor shall furnish the Government a description of the project control system applicable to each project as required by the Contracting Officer. The Contractor agrees to provide access to all pertinent records, data and plans as requested by representatives of the Government for the conduct of this review.
- (b) The description of the project control systems accepted by the Contracting Officer shall be maintained and used by the Contractor in the performance of this Contract.
- (c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer

approval is required, the Contracting Officer shall advise the Contractor of the acceptability of such changes within sixty (60) calendar days after receipt from the Contractor. When systems existing at the time of contract award do not comply with the designated guidelines, adjustments necessary to assure compliance will be made at no change in contract price or fee.

- (d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer, or duly authorized representative(s), for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to the project or group of projects under this Contract.
- (e) The Contractor shall require that each selected subcontractor, as determined by the Contracting Officer, meet specific guidelines for the project control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime Contractor, or by the Government when requested by either the Government, prime or subcontractor.

H.20 REPORTING REQUIREMENTS

- (a) Work Breakdown Structure. Except as provided for elsewhere in the contract, the Work Breakdown Structure (WBS), as approved by the Contracting Officer, shall provide the basis for all reports required under this contract. The WBS shall be derived from the Scope of Work described in this contract and shall also conform to any implementation guidance which may be provided by the Contracting Officer.
- (b) Periodic Plans and Reports. The Contractor shall submit periodic cost, schedule, and technical performance plans and reports, in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:

General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.

Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.

Performance Measurement Reports provide information regarding the actual cost of work performed relative to the budgeted cost for work performed relative to the budgeted cost for work scheduled, and provide for reporting data on performance measurement baseline maintenance and estimates at completion.

Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated. Plans and reports shall be prepared by the Contractor in such a manner as to provide for—

- (1) Consistency with the contract Scope of Work, the Work Authorization Directives (WADs), and the approved WBS.
 - (2) Correlation of data among the various plans and reports.
- (c) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Control System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the Scope of Work or discrete WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer:
- (1) Incorporate contractual changes affecting estimated cost and schedule in a timely manner.
 - (2) Reconcile estimated cost for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
 - (i) Changes to the authorized work; and
 - (ii) Internal replanning in the detail needed by management for effective control.
 - (3) Prohibit retroactive changes to records pertaining to work performed that will change previously reported costs except for correction of errors and routine accounting adjustments.
 - (4) Prevent revisions to the contract estimated costs except for Government-directed changes to the contractual effort.
 - (5) Document, internal changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- (d) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to any and all information and documents comprising the Contractor's reporting system.

- (e) The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when—
 - (1) The value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, and,
 - (2) The Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

H.21 WORK AUTHORIZATION

- (a) Prior to the start of each fiscal year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop estimated costs, scope, and schedule for the performance thereof. The Contractor shall submit to the Contracting Officer or other designated authorized representative, a detailed statement of work consistent with Section C, “Performance Work Statement,” a budget of estimated costs and corresponding schedule of performance for work to be performed during the next fiscal year. The level of work activities, estimated cost, and schedule shall be a task level 2 of the Work Breakdown Structure (WBS), consistent with the Statement of Work or other level as specified by the Contracting Officer.
- (b) Budget Negotiations: Prior to the authorization to proceed with the performance of any work under this contract, the Contractor and the DOE shall mutually establish a budget of estimated costs, a detailed statement of work, and schedule of performance for each task at level 2 of the WBS or as otherwise specified by the Contracting Officer for that fiscal year. The established estimated costs, detailed statement of work, and schedule of performance shall be incorporated into the contract’s Section J, Attachment entitled “Work Authorization Directives (WADs),” and by modification. If agreement cannot be reached on the scope, schedule, and/or estimated cost for the WADs, the Contracting Officer shall issue a unilateral modification establishing the estimated cost and issue the WAD pursuant to this subsection authorizing Contractor performance, which shall not be subject to the Contract Clause entitled “Disputes - Alternate I.”
- (c) No activities shall be authorized and no costs incurred until either the Contracting Officer has issued direction concerning continuation of activities.
- (d) Work Authorization Directives: The WADs authorizing the Contractor to proceed with performance of the annual Statement of Work, shall be provided in writing to the Contractor by the Contracting Officer. Each WAD so issued will include the following:
 - (1) Authorization number and work initiation date.
 - (2) Description of Work.

- (3) Revision Number.
 - (4) The total estimated cost for the work to be performed under this authorization and current period estimated cost if the WAD performance schedule exceeds the current fiscal year.
 - (5) Appropriate schedule and milestone dates.
 - (6) Cost, schedule, and all other reporting requirements.
 - (7) Performance, objectives, measures, and targets.
 - (8) Date of issue.
 - (9) Responsible DOE Designated Official signature.
 - (10) Contracting Officer signature.
- (e) Performance Direction: Government direction of the performance of all work authorized for performance under this contract shall be in accordance with the Special Contract Requirement entitled “Performance Direction.”
- (f) Modification: The Contracting Officer may at any time and without notice issue WADs within the Scope of Work of this contract requiring additional work, or directing the omission of, or changes to the Statement of Work of this contract. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (g) of this subsection shall be submitted by the Contractor as mutually agreed upon with the Contracting Officer.
- (g) Expenditure of Funds and Incurrence of Cost: The performance of work and the incurrence of cost in the execution of the Statement of Work of this contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall also be governed by the provisions of the Contract Clause entitled “Obligation of Funds.” The Contractor shall notify the Contracting Officer whenever it anticipates under-running a WAD by more than 10% or over-running a WAD in any amount.
- (h) Remuneration: An annual fee shall be negotiated in accordance with the contract clause entitled “Total Available Fee: Base Fee Amount and Performance Fee Amount” for the performance of work authorized pursuant to this subsection. In accordance with the Contract Clause entitled “Changes,” when a WAD results in a material change in the negotiated budget of total estimated cost or character of the Statement of Work, an equitable adjustment of the fee shall be made in accordance with the agreement of the parties and the contract shall be modified in writing.

- (i) Order of Precedence: This subsection is of lesser order of precedence than the Contract Clauses entitled “Obligation of Funds,” and “Payments and Advances.” The Contractor is not authorized to incur costs on any WAD which are not in compliance with the other terms and conditions of this contract.
- (j) Conflicts: In the event there is a conflict between the requirements of this subsection and Section J, Attachment entitled “List of Applicable Directives,” as amended, the Contractor shall obtain guidance from the Contracting Officer.
- (k) Reporting: Reporting shall be in accordance with the Special Contract Requirement entitled “Reporting Requirements.”
- (l) Responsibility to Achieve Environmental, Safety and Health Compliance: Notwithstanding the provisions of this subsection, the Contractor has, in the event of an emergency, authority to authorize corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety and health statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, with 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraphs (a) and (b) of this subsection.

H.22 WITHDRAWAL OF WORK

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Performance Work Statement, of this contract performed by either another contractor or Government employees.
- (b) Work may be withdrawn:
 - (1) In order for the Government to conduct pilot programs;
 - (2) If the Contractor’s estimated cost of the work is considered unreasonable;
 - (3) For less than satisfactory performance by the Contractor; or
 - (4) For any other reason deemed by the Contracting Officer to be in the best interest of the Government.’
- (c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.
- (d) The contract will be modified to reduce the estimated costs and fee for any work withdrawn by the Contracting Officer.

H.23 PERFORMANCE CRITERIA, MEASURES, OUTPUT TARGETS, AND INCENTIVES

The Government will develop performance criteria, measures and output targets for the coming fiscal year which will be set forth in the Work Authorization Directives developed and issued pursuant to the Section H Provision entitled “Work Authorization.” The Contractor may also propose additional performance measures, which will be negotiated prior to placement in the Work Authorization Directives. The evaluation areas and individual requirements that will be subject to incentivization will be included in the Performance Evaluation and Measurement Plan developed and issued pursuant to the Clause in Section I entitled, “Total Available Fee: Base Fee Amount and Performance Fee Amount.” The evaluation of performance against measures will be a consideration in (1) development of fee awards, if any, (2) the DOE decision whether to exercise the option to extend the contract and (3) terminating the contract for default.

NOTE – COST REDUCTION INCENTIVE: The Department of Energy (DOE) expects the contractor to manage and operate the Strategic Petroleum Reserve in an efficient and effective manner. To this end, the contractor will be provided an incentive to achieve significant cost reduction without adversely affecting the level of performance required by the contract. Details implementing this incentive will be set forth in the annual Performance Evaluation and Measurement Plan issued pursuant to Section I Clause entitled “Total Available Fee: Base Fee Amount and Performance Fee Amount” of this contract. DOE anticipates that up to 25 percent of annual available fee will be assigned to this evaluation area in the Performance Evaluation and Measurement Plan incorporated in the contract in Section J, Attachment J.

The baseline for the measurement of the contractor’s performance will be the contractor’s approved Annual Operating Plan established each fiscal year. Reductions resulting from schedule delays, direction given by the DOE or changes in the mission, work scope, or routine reorganization of the contractor due to changes in the budget do not qualify for this incentive.

H.24 EMPLOYEE CONCERNS PROGRAM (ECP)

The Contractor shall submit an implementation plan to the Contracting Officer for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements of the applicable DOE Order 442.1A.

H.25 ENVIRONMENT, SAFETY, AND HEALTH (ES&H)

- (a) The Contractor shall comply with existing system description document in accordance with the Section I Clause DEAR 970.5223-1 entitled, “Integration of ES&H Into Work Planning and Execution.” The Contractor shall submit an update to the existing Integrated Safety Management System (ISMS) Description Document

within 60 days of contract award and thereafter in accordance with the Work Authorization Directive. Any changes to the ISMS Description Document after the Contracting Officer's or designee's initial approval, shall be approved by the Contracting Officer or designee.

- (b) The initial update of the ISMS Description Document shall include any revisions to ES&H Plans/Programs and include interfaces with other equivalent plans/program approved by DOE as required by the Contract Clause in Section I entitled "Laws, Regulations, and DOE Directives."
- (c) This contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract.

H.26 ENVIRONMENTAL PERMITS AND APPLICATIONS

Except as otherwise directed by the Contracting Officer, the Contractor is required to prepare all necessary Federal, State, and local permit applications. If any agency or agencies, which regulate the permits, require the signature of an operator on the permit, the Contractor, in recognition of its operator responsibilities, shall sign the permit as required by the regulators. In the event of termination or expiration of this Contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.

H.27 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION(S) AND FINES AND PENALTIES

- (a) The Contractor shall accept, in its own name, notices of violation(s) 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 other provisions of this contract.
- (b) After providing DOE advance written notice, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fines and penalties. However, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without first obtaining written approval from the Contracting Officer. Failure to obtain advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.
- (c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H.28 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Any possible violation of the prohibition against falsely labeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, should be promptly reported through the Contracting Officer. The DOE Contracting Officer is responsible for reporting of an entity in violation of the prohibition against falsely labeling products as American-Made to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

H.29 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE

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

- (a) The Government may take possession of 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 right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical information includes, but is not limited to specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for the completion of work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause entitled “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, nonexclusive, 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 of 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, and any licenses in any third party intellectual property to the Government, or such third party as the Government may designate, that are necessary for the completion of the work contemplated under this contract.

H.30 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On April 1, 2013, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract DE-AC96-03PO92207.

H.31 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not the appropriate such information to its own use or to disclose such information to third parties, unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he 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.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.

- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or information data it is given access to or is furnished, restricting the use and disclosure of the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clauses shall flow down to all appropriate subcontracts.
- (f) Technical data is addressed in DEAR 970.5227-1.

H.32 TRAVEL RESTRICTIONS

- (a) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
 - (1) Federal Travel Regulations (FTR) for travel within the 48 states;
 - (2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, an territories and possession of the United States; or
 - (3) Standardized Regulations (SR) for travel allowances in foreign areas.

The definitions of lodging, meals, and incidental expenses, and special or unusual situations of the above regulations are applicable to Contractor travel.

- (b) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for physical or medial needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

H.33 LOBBYING RESTRICTIONS

- (a) The Contractor shall not commit any funds obligated on this contract to 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 described in 18 U.S.C 1913. This restriction is in additional to those prescribed elsewhere in applicable status and regulation.

- (b) Any travel associated with legislative monitoring must be approved in advance by the Contracting Officer.

H.34 TRANSITION TO FOLLOW-ON CONTRACT

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above that:

At the expiration of the contract term or any earlier termination therefor, the Contractor shall cooperate with a successor Contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits. After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the scope of work covered by the contract. A proposed date by which successor Contractor will assume full responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the Contracting Officer's direction and approval. This clause shall apply to subcontracts as approved by the Contracting Officer. The Contractor shall be reimbursed for all reasonable phase-in and phase-out costs, i.e., costs incurred within the agreed period after contract expiration that result from phase-in and phase-out operations.

H.35 SERVICES

Services acquired by the Contractor for the Strategic Petroleum Reserve are acquired for the benefit of the Department of Energy and are immediately resold to the Government as a resale of services in accordance with Texas and Louisiana sales tax provisions.

H.36 ASSIGNMENT AND ADMINISTRATION OF CONTRACTS AND SUBCONTRACTS

(a) Assignment of DOE Prime Contracts.

During the period of performance of this Contract, it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign existing or future DOE prime contracts support site work to this contract. The Contractor shall accept the transfers and assignments of contracts. Any recommendations and/or suggestions regarding individual transfers directed by DOE shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.

(b) Administration of Subcontracts.

The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor. The Government reserves the right at any time to require that the Contractor submit any or all other contractual arrangements, including but not limited to purchase orders or classes of purchase orders, for approval, and provide information concerning methods, practices, and procedures used or proposed to be used in subcontracting and purchasing. Subcontracts and purchase orders shall be made in the name of the Contractor, shall not bind nor purport to bind the Government, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall be in such form and contain such provisions as are required by this contract or as the Contracting Officer may prescribe. Any consent by the Contracting Officer to the placement of subcontracts shall not be construed to create subcontractor privity of contract with the Government.

(c) Transfer of Subcontracts.

On April 1, 2013, the Contractor shall assume responsibility for existing contracts and other agreements from the Contract Number DE-AC96-03PO92207. These include: (a) all subcontracts and purchase orders with the exception of incumbent contractor's parent company task orders, (b) consulting agreements, (c) regulatory agreement and permits, (d) site-wide plans (e.g., safety and security plans), and (e) other agreements in effect prior to the execution of this contract.

H.37 RECOGNITION OF PERFORMING ENTITY

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

TO BE PROVIDED BY OFFEROR

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in Paragraph (a) above without the prior written approval of the Contracting Officer.

H.38 LITIGATION MANAGEMENT PROCEDURES

- (a) The Contractor (including entities named in Paragraph (a) of the provision in Section H entitled “Recognition of Performing Entity”) shall prepare a Management of Litigation Procedure(s) compliant with Code of Federal Regulations Title 10 Subpart 719, which shall be submitted to the Contracting Officer within 60 days after the effective date of the contract, and shall be updated thereafter as required.
- (b) The SPR Chief Counsel is the authorized designee of the Contracting Officer for approval of this Procedure.
- (c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE-approved Contractor legal management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

H.39 ADVANCE UNDERSTANDING(S)

The following Advance Understanding(s) is (are) made a part of this contract:

TBD.