

PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

TABLE OF CONTENTS

	<u>PAGE</u>
H.1 TECHNICAL DIRECTION AND SURVEILLANCE *(B, 1, 2, 3)	H-5
H.2 SUBCONTRACTS, PURCHASE ORDERS AND CONSULTING SERVICES *(B, 1, 2, 3)	H-7
H.3 COST PRINCIPLES FOR COMMERCIAL ORGANIZATIONS *(B, 1, 2, 3)	H-8
H.4 GOVERNMENT-FURNISHED PROPERTY *(B, 1, 2, 3)	H-10
H.5 AVAILABILITY OF DEPLETED URANIUM *(B, 1, 2)	H-14
H.6 GOVERNMENT-FURNISHED SERVICES *(B, 1, 2, 3)	H-15
H.7 TITLE TO NUCLEAR MATERIALS AND MOX FUEL ASSEMBLIES OR PINS *(B, 1, 2)	H-17
H.8 DOE SECURITY CLEARANCES *(B, 1, 2, 3)	H-17
H.9 OPTIONS TO EXTEND SERVICES *(B, 1, 2, 3)	H-17
H.10 CONSTRUCTION PROHIBITION *(B, 1, 2)	H-18

	<u>PAGE</u>
H.11 COST RESPONSIBILITY AFTER COMPLETION OF HOT START-UP AND TRANSITION TO FULL OPERATIONS *(2)	H-19
H.12 PLUTONIUM DISPOSITION SHARING FORMULA AFTER TRANSITION TO FULL OPERATIONS OF THE MOX FUEL FABRICATION FACILITY *(2)	H-20
H.13 FUEL FABRICATOR TO PERFORM FUEL FABRICATION SERVICES *(B, 1, 2, 3)	H-22
H.14 MISSION REACTORS TO PERFORM IRRADIATION SERVICES *(B, 1, 2)	H-23
H.15 DEACTIVATION *(3)	H-24
H.16 AVOIDANCE OF DUPLICATION OF EFFORT *(B, 1, 2, 3)	H-25
H.17 RESPONSIBILITY OF THE CONTRACTOR FOR ERRORS OR DEFICIENCIES *(B, 1, 2, 3)	H-25
H.18 STANDARD INSURANCE REQUIREMENTS *(B)	H-26
H.19 INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF BIDDERS/OFFERORS *(B, 1, 2, 3)	H-26
H.20 REACTOR OPERATING LICENSE EXTENSION *(B, 1, 2)	H-27
H.21 WORK AUTHORIZED PRIOR TO RECORD OF DECISION *(B)	H-27

	<u>PAGE</u>
H.22 NON-INTERFERENCE WITH NRC LICENSING REQUIREMENTS *(B, 1, 2)	H-28
H.23 VALUE ENGINEERING *(B, 1, 2, 3)	H-28
H.24 RIGHT TO LEASE *(1, 2, 3)	H-29
H.25 TITLE TO MISSION REACTOR MODIFICATIONS *(1, 2, 3)	H-29
H.26 PAYMENT OF NRC FEES AND OVERSIGHT CHARGES *(B, 1, 2, 3)	H-29
H.27 PERFORMANCE GUARANTEE *(B, 1, 2, 3)	H-29
H.28 PERFORMANCE AND PAYMENT BONDS - CONSTRUCTION *(1)	H-29
H.29 MAINTENANCE OF PROPRIETARY DATA *(B, 1, 2, 3)	H-30
H.30 TECHNOLOGY FEE CONSIDERATION *(B, 1, 2, 3)	H-30
H.31 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE *(B, 1, 2, 3)	H-31
H.32 ADVANCE UNDERSTANDINGS *(B, 1, 2, 3)	H-32

	<u>PAGE</u>
H.33 RESTRICTION ON DISCLOSURE OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE TO FOREIGN GOVERNMENTS *(B, 1, 2, 3)	H-33
H.34 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999) *(B)	H-33
H.35 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS—SENSE OF CONGRESS *(B)	H-33

*Clauses are applicable to the Base Contract effort and Options 1, 2, 3 in accordance with the following codes which follow the title of each clause:

B = Base Contract
1 = Option 1
2 = Option 2
3 = Option 3

PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 TECHNICAL DIRECTION AND SURVEILLANCE

(a) The work to be performed by the Contractor under this contract is subject to the surveillance and written Technical Direction of a "Technical Manager", identified in Part I, Section G, who shall be specifically appointed by the Contracting Officer in writing. The term "Technical Direction" is defined to include, without limitation, the following:

- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise provide technical guidance to the Contractor in order to accomplish the tasks and requirements stated in Part I, Section C - Description/ Specifications/Work Statement of this contract.
- (2) Provision of information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of Part I, Section C - Description/Specifications/Work Statement of this contract.
- (3) Review and, where required by the contract, approval of technical reports, drawings, specifications or technical information to be delivered by the Contractor to DOE under the contract.

The Technical Manager shall monitor the Contractor's performance with respect to compliance with the requirements of this contract.

(b) Technical direction and management surveillance shall not impose tasks or requirements upon the Contractor additional to or different from the tasks and requirements stated in Part I, Section C - Description/Specifications/Work Statement of this contract. The Technical Direction to be valid:

- (1) Must be issued in writing consistent with the tasks and requirements stated in Part I, Section C - Description/ Specifications/Work Statement of this contract; and

- (2) May not:

- (i) constitute an assignment of additional work outside the tasks and requirements stated in Part I, Section C - Description/ Specifications/Work Statement of this contract;
 - (ii) constitute a change as defined in the "Changes" clause of the contract;
 - (iii) in any manner cause an increase or decrease in the total estimated contract cost or the time required for contract performance;
 - (iv) change any of the expressed terms, conditions or specifications of the contract;
 - (v) accept non-conforming work; or
 - (vi) result in non-conformance with NRC license requirements.
- (c) The Contractor shall proceed promptly with the performance of Technical Directions duly issued by the Technical Manager in the manner prescribed by paragraph (b) and which are within his authority under the provisions of paragraph (a); provided, however, that the Contractor shall immediately cease the performance of any Technical Direction upon receipt of a written instruction to that effect from the Contracting Officer.
- (d) If in the opinion of the Contractor, any Technical Direction issued by the Technical Manager is within one of the categories as defined in (b)(2)(i) through (vi) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after the receipt of any such Technical Direction and shall request the Contracting Officer to modify the contract accordingly. Such notice shall (i) include the reason upon which the Contractor bases its belief that the Technical Direction falls outside the purview of paragraph (a) above and (ii) include the Contractor's best estimate as to any necessary revisions in the estimated cost, fixed fee, performance time, delivery schedules and any other contractual provisions that would result from implementing the Technical Direction. If, after reviewing the information presented pursuant to (d)(i), the Contracting Officer is of the opinion that such Technical Direction is within the purview of the "Changes" clause of the contract, set forth in Part II, Section I, and he considers such changes desirable, he will issue unilateral direction to proceed pursuant to the authority granted him under said clause. If the Contracting Officer determines that such direction is Technical Direction authorized by this clause, the Contracting Officer will direct the Contractor to proceed with the implementation of such Technical Direction and the Contractor shall comply therewith. In the event the Contracting Officer determines that it is necessary to avoid a delay in performance of the contract he may, in writing, direct the Contractor to proceed with the implementation of the Technical Direction pending receipt of the information to be submitted pursuant to (d)(i) and

- (ii) above. Should the Contracting Officer later determine that Change direction is appropriate, the written decision issued hereunder shall constitute the required Change direction.
- (e) Failure of the Contractor and the Contracting Officer to agree on whether the Government Direction as issued is Technical Direction or a change within the purview of the "Changes" clause of the contract and/or otherwise falls within the limitations set forth in (b) above shall be a contract dispute concerning a question of fact within the meaning of the "Disputes" clause of the contract, set forth in Part II, Section I.
- (f) The only persons authorized to give Technical Direction to the Contractor under this contract are the Contracting Officer and any "Technical Manager" who may be appointed by the Contracting Officer in writing. Any action taken by the Contractor in response to any direction given by any person other than the Contracting Officer or Technical Manager shall not be binding upon the Government.

H.2 SUBCONTRACTS, PURCHASE ORDERS AND CONSULTING SERVICES

- (a) Prior to the placement of subcontracts and in accordance with the clause entitled "Subcontracts", as set forth in Part II, Section I, General Contract Clauses, the Contractor shall ensure that:
- (1) Subcontracts contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts;
 - (2) Appropriate Representations, Certifications and Other Statements of the Bidder/Offeror have been received from the Subcontractor;
 - (3) Any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received pursuant to the clause entitled "Subcontracts". Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (i) to revise this contract or any of the respective obligations of the parties thereunder, or (ii) to create any subcontractor privity of contract with the Government.
- (b) In order to insure that the proposed subcontract is properly evaluated prior to Contracting Officer consent, a copy of the proposed subcontract document along with any documentation required by the clause, "Subcontracts" shall be submitted by the prime contractor to the responsible Contracting Officer.

- (c) DOE Acquisition Regulations (Subpart 908.71 - Acquisition of Special Items) set forth requirements and procedures for the acquisition of special items by DOE contractors such as: motor vehicles, alcohol, helium, calibration services, aircraft, Government license tags, office machines, office furniture and furnishings, security cabinets, fuels and packaged petroleum products, coal, forms, electronic data processing tape, tabulating machine cards, special materials such as heavy water, and precious metals such as platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver, etc. Contractors should familiarize themselves with the contents of this regulation.
- (d) In addition to the provisions of the clause entitled "Subcontracts", the prior written consent of the Contracting Officer shall be obtained for the services of consultants when: (1) any employee of the Contractor is to be reimbursed as a "consultant" under this contract, or (2) the consulting agreement provides for a daily rate in excess of \$400.00 per day, or (3) the consulting agreement provides for total compensation in excess of \$5,000.00.

H.3 COST PRINCIPLES FOR COMMERCIAL ORGANIZATIONS

The cost principles contained in Federal Acquisition Regulation (FAR) Subpart 31.2, Contracts with Commercial Organizations, and Department of Energy Acquisition Regulation (DEAR) Subpart 931.2, in effect on the effective date of the contract, are hereby incorporated by reference into this contract and shall be utilized to determine allowability of costs under this contract.

For ease of reference the following is a listing of the applicable cost principles and their effective dates.

<u>Number</u>	<u>Reference</u>	<u>Title</u>	<u>Date</u>
1.	FAR 31.201-1	Composition of total cost	Feb. 1995
2.	FAR 31.201-2	Determining allowability	Aug. 1996
3.	FAR 31.201-3	Determining reasonableness	July 1987
4.	FAR 31.201-4	Determining allocability.....	Apr. 1984
5.	FAR 31.201-5	Credits.....	Oct. 1998
6.	FAR 31.201-6	Accounting for unallowable costs.....	Feb. 1995
7.	FAR 31.201-7	Construction and architect-engineer contracts	Apr. 1984
8.	FAR 31.202	Direct costs	Apr. 1984
9.	FAR 31.203	Indirect costs.....	Aug. 1992
10.	FAR 31.204	Application of principles and procedures	Sept. 1997
11.	FAR 31.205-1	Public relations and advertising costs	May 1997
12.	FAR 31.205-2	[Reserved]	
13.	FAR 31.205-3	Bad debts	Apr. 1984
14.	FAR 31.205-4	Bonding costs	Apr. 1984
15.	FAR 31.205-5	[Reserved]	

16.	FAR 31.205-6	Compensation for personal services	Dec. 1998
17.	FAR 31.205-7	Contingencies	Apr. 1984
18.	FAR 31.205-8	Contributions or donations	Apr. 1986
19.	FAR 31.205-9	[Reserved]	
20.	FAR 31.205-10	Cost of money.....	Feb. 1998
21.	FAR 31.205-11	Depreciation	Feb. 1997
22.	FAR 31.205-12	Economic planning costs.....	Apr. 1984
23.	FAR 31.205-13	Employee morale, health, welfare, food service, and dormitory costs and credits	Oct. 1995
24.	FAR 31.205-14	Entertainment costs	Oct. 1995
25.	FAR 31.205-15	Fines, penalties, and mischarging costs	Jan. 1991
26.	FAR 31.205-16	Gains and losses on disposition or impairment of depreciable property or other capital assets	Feb. 1997
27.	FAR 31.205-17	Idle facilities and idle capacity costs	Apr. 1984
28.	DEAR 931.205-18	Independent research and development (IR&D) and bid and proposal (B&P) costs	Dec. 1997
29.	FAR 31.205-19	Insurance and indemnification	Aug. 1992
30.	FAR 31.205-20	Interest and other financial costs.....	Apr. 1984
31.	FAR 31.205-21	Labor relations costs.....	Apr. 1984
32.	FAR 31.205-22	Lobbying and political activity costs	Jan. 1997
33.	FAR 31.205-23	Losses on other contracts	Apr. 1984
34.	FAR 31.205-24	Maintenance and repair costs.....	Aug. 1992
35.	FAR 31.205-25	Manufacturing and production engineering costs	Apr. 1984
36.	FAR 31.205-26	Material costs.....	Sept. 1997
37.	FAR 31.205-27	Organization costs	Apr. 1988
38.	FAR 31.205-28	Other business expenses.....	Apr. 1984
39.	FAR 31.205-29	Plant protection costs	Apr. 1984
40.	FAR 31.205-30	Patent costs	Apr. 1984
41.	FAR 31.205-31	Plant reconversion costs	Apr. 1984
42.	DEAR 931.205-32	Precontract costs.....	Oct. 1984
43.	FAR 31.205-33	Professional and consultant service costs	Sept. 1997
44.	FAR 31.205-34	Recruitment costs	Apr. 1984
45.	FAR 31.205-35	Relocation costs.....	July 1987
46.	FAR 31.205-36	Rental costs.....	Dec. 1996
47.	FAR 31.205-37	Royalties and other costs for use of patents.....	Apr. 1986
48.	FAR 31.205-38	Selling costs.....	May 1997
49.	FAR 31.205-39	Service and warranty costs.....	Apr. 1986
50.	FAR 31.205-40	Special tooling and special test equipment costs.....	Apr. 1986
51.	FAR 31.205-41	Taxes.....	Mar. 1996
52.	FAR 31.205-42	Termination costs	Sept. 1997
53.	FAR 31.205-43	Trade, business, technical, and professional activity costs	Oct. 1995
54.	FAR 31.205-44	Training and education costs.....	Aug. 1987
55.	FAR 31.205-45	Transportation costs	Apr. 1984
56.	FAR 31.205-46	Travel costs.....	Jun. 1998
57.	FAR 31.205-47	Costs related to legal and other proceedings	Oct. 1998

58.	FAR 31.205-48	Deferred research and development costs	Apr. 1984
59.	FAR 31.205-49	Goodwill	Aug. 1984
60.	FAR 31.205-50	[Reserved]	
61.	FAR 31.205-51	Cost of alcoholic beverages	Apr. 1986
62.	FAR 31.205-52	Asset valuations resulting from business combinations.....	Feb. 1998

H.4 GOVERNMENT-FURNISHED PROPERTY

Pursuant to paragraphs (a) (2) of the clauses entitled, "Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986)" and "Government Property (Fixed-Price Contracts) (DEC 1989)", set forth in Part II, Section I, the following item(s) shall be furnished by the Government at no cost to the Contractor for performance of the work hereunder:

GOVERNMENT-FURNISHED PROPERTY

Government-Furnished Property	Description	Schedule for Delivery*
<p>Depleted uranium (if requested by the Contractor). See Part I, Clause H.5.</p> <p>Applicable to:</p> <ul style="list-style-type: none"> - Base Contract - Option 1 - Option 2 	<p>Depleted uranium in the form of DUF_6 will be provided in sufficient quantities to meet the Contractor's requirements. DUF_6 will be of the same purity as low enriched UF_6 delivered by the United States Enrichment Corporation to domestic customers for use in commercial nuclear fuel.</p>	<p>Depleted uranium will be provided on a schedule agreed to by the Contractor and DOE.</p>
<p>Plutonium oxide (See characteristics and impurities on tables H-4a and H-4b).</p> <p>Applicable to:</p> <ul style="list-style-type: none"> - Base Contract - Option 1 (for receipt and storage only in accordance with NRC license) - Option 2 	<ol style="list-style-type: none"> 1. Plutonium oxide rendered from a dry process unless the Contractor will utilize plutonium oxide polishing in the MOX Fuel Fabrication process, in which case, the plutonium oxide will be furnished as polished material. 2. 33 metric tonnes (MT) of plutonium rendered from the dry process. 	<ol style="list-style-type: none"> 1.a. 100 Kgs/year of plutonium oxide available starting on January 1, 2001 up to October 1, 2004. 1.b. Plutonium oxide for test/demonstration fuel will be delivered on dates as specified in Part III, Section J, Attachment 1, Subpart II.B.5. 2. Plutonium oxide will be available at the rate of 3.5 MT Pu per year beginning October 1, 2004 and will be delivered on a schedule agreed to by the Contractor and DOE.
<p>Building site for the construction of the MOX Fuel Fabrication Facility. See Part I, Clause H.24.</p> <p>Applicable to:</p> <ul style="list-style-type: none"> - Base Contract - Option 1, 2, 3 	<p>A building site at a DOE host-site location to be identified by DOE in the SPDEIS ROD, suitable for construction of a MOX Fuel Fabrication Facility.</p>	<p>The building site will be provided on a mutually agreed to schedule by the Contractor and DOE.</p>
<p>Plutonium oxide feed material storage cans.</p> <p>Applicable to:</p> <ul style="list-style-type: none"> - Base Contract - Option 1, 2 	<p>Stainless steel storage cans for the plutonium oxide feed material in sufficient quantity to handle the feed material necessary to complete the SOW.</p>	<p>Cans will be provided to the Contractor on a mutually agreed to schedule by the Contractor and DOE.</p>
<p>Two MO-1 certified shipping packages for the transportation of test/demonstration fuel (if requested by the Contractor). See Part III, Section J, Attachment 1, Subpart II.B.7.</p> <p>Applicable to:</p> <ul style="list-style-type: none"> - Base Contract 	<p>Two MO-1 shipping packages, certified by the NRC, capable of containing certain test/demonstration fuel pins or assemblies. A package will hold 2 PWR fuel assemblies or accommodate fuel pin boxes of a length up to 159 inches for shipment of either PWR or BWR fuel pins.</p>	<p>The shipping packages for transportation of test/demonstration fuel will be provided on a schedule to meet the Contractor's fuel qualification irradiation schedule.</p>

*See Clause H.21

Table H-4a
PuO₂ Powder Characteristics and Impurities

The plutonium oxide delivered to the Contractor will be characterized for Pu isotopics and impurities. The elemental impurities will be less than the values specified below and on the following page.

CHARACTERISTICS

Pu Content (weight %, Pu/PuO ₂ X 100)	86-88.2
Pu Isotopics	Reported when delivered
²⁴¹ Am (weight %, ²⁴¹ Am/Pu X 100)	<0.5
Surface Area, square meters per gram	Reported when delivered
Particle Size, micrometers	1. 95-100% < 44 2. 99-100% < 100

Am – Americium

Table H-4b
PuO₂ Powder Characteristics and Impurities

IMPURITIES (micrograms per gram Pu)

Ag - Silver	100	Nb - Niobium	100
Al - Aluminum	150	Ni - Nickel	200
B - Boron	50	P - Phosphorus	100
Be - Beryllium	100	Pb - Lead	200
Bi - Bismuth	100	S - Sulphur	250
C - Carbon	500	Si - Silicon	200
Ca - Calcium	500	Sm - Samarium	2
Cd - Cadmium	10	Sn - Tin	100
Cl - Chlorine	(+Fl<250)	Ti - Titanium	100
Co - Cobalt	100	Th - Thorium	100
Cr - Chromium	100	U - Uranium*	5000
Cu - Copper	100	V - Vanadium	300
Dy - Dysprosium	1.0	W - Tungsten	200
Eu - Europium	1.0	Zn - Zinc	100
F - Fluorine	(+Cl<250)	Zr - Zirconium	50
Fe - Iron	500	Boron Equivalent	10
Ga - Gallium	10000	Total Impurities**	15100
Gd - Gadolinium	3		
In - Indium	20		
K - Potassium	100		
Li - Lithium	100		
Mg - Magnesium	500		
Mn - Manganese	100		
Mo - Molybdenum	100		
N - Nitrogen	300		
Na - Sodium	300		

*Isotopics to be Reported when Delivered.

**The total impurity value is exclusive of the Am contribution; the maximum Am concentration is stated on the previous page.

H.5 AVAILABILITY OF DEPLETED URANIUM

If requested by the Contractor, the Government shall make available depleted uranium in the form of DUF_6 as Government-furnished material in quantities sufficient to meet the Contractor's requirements subject to the following conditions. The Contractor shall be responsible for repackaging, storage, transportation and conversion of this material. The depleted uranium is available at the following DOE sites: Paducah, KY; Portsmouth, OH; Oak Ridge, TN (K-25 site). Refer to ORNL/TM-13417, Availability of Uranium Feed for the Fissile Materials Disposition Program, Vol. 1: Depleted UF_6 , for details on material available, transportation requirements, and conversion to UO_2 . For the base contract and Option 1, DOE will reimburse the Contractor for the repackaging, storage, transportation and conversion of the DUF_6 to UO_2 . For Option 2, DOE will reimburse the Contractor for these services through the completion of hot start-up and transition to full operations. Upon DOE's acceptance of the Contractor's Certification of the Completion of Hot Start-Up and Transition to Full Operations, the Contractor will be responsible for all costs associated with the repackaging, storage, transportation and conversion of this material.

H.6 GOVERNMENT-FURNISHED SERVICES

The following services will be provided by the Government, if required by the Contractor, at no cost to the Contractor; however, the Contractor shall be responsible for packaging of waste material as indicated below:

Government Furnished Services	Description	Schedule for Delivery*
Personnel, facilities, equipment, materials and services for performing fabrication of test/demonstration fuel pins and assemblies. Applicable to: - Base Contract	The DOE host site for test/demonstration fuel pins and assemblies will provide all personnel, facilities, equipment, materials, and services except as may otherwise be provided by the Contractor for the fabrication of test/demonstration fuel pins and assemblies. (See Part III, Attachment J.1, Part II.B.2).	The site location(s) will be identified by DOE in the SPDEIS ROD and will be available on a schedule agreed to by the parties.
Transportation services for Categories I and II quantities of SNM Applicable to: - Base Contract - Option 2	DOE will provide secure transportation in DOE furnished safe secure trailers (SSTs) for Categories I and II quantities of SNM.	Services will be provided on a schedule agreed to by the Contractor and DOE.
DOE host site services for the MOX Fuel Fabrication Facility. Applicable to: - Base Contract - Option 1 - Option 2 - Option 3	The DOE host site will provide the site services listed in Table H.6, if available at the host site and required for performance of the Statement of Work.	Services will be provided on a schedule agreed to by the Contractor and DOE.
Advanced Test Reactor for Performing irradiation of test/demonstration pins. Applicable to: - Base Contract	DOE will provide ATR, if requested, by the Contractor as part of the DOE approved fuel qualification plan.	Services will be provided on a schedule agreed to by the Contractor and DOE.
Personnel, facilities, equipment, materials and services for performing post irradiation examination of MOX fuel pins and assemblies. Applicable to: - Base Contract - Option 2	The DOE post irradiation examination site will provide all personnel, facilities, equipment, materials, and services except as may otherwise be provided by the Contractor. (See Part III, Attachment J.1, Part II.C.6 and IV.C.1).	The site location(s) will be identified by DOE and will be available on a schedule agreed to by the parties.

*See Clause H.21

Table H.6

LIST OF DOE HOST SITE SERVICES

Utilities:

Telephone/Communications

Electric Power

Domestic Water (Potable)

Fire Water (Non-Potable)

Sanitary Sewer

Natural Gas

Heating Oil

Low Pressure Steam

Storm Sewers

Emergency medical services

Laundry Services

Security (outside PIDAS)

Fire Department

Emergency Response Services

Site Infrastructure Maintenance (outside PIDAS)

Site Environmental Services (e.g., monitoring, lab analysis, etc)

Metrology Services

Transportation and disposal of low level, hazardous, non-hazardous, mixed and TRU waste
(Contractor is responsible for packaging waste).

H.7 TITLE TO NUCLEAR MATERIALS AND MOX FUEL ASSEMBLIES OR PINS

Title to all fuel assemblies or pins which contain any Government-furnished nuclear materials shall vest with the Government until such fuel assemblies or pins are inserted into a reactor core at which time title to the fuel assemblies or pins shall transfer to the reactor licensee. For any irradiated fuel assemblies or pins which are sent to a DOE facility for post irradiation examination, DOE may require that title to the fuel assemblies or pins transfer to the Government upon receipt at the Government facility.

H.8 DOE SECURITY CLEARANCES

The Contractor shall not permit any individual to have access to any classified information or significant quantities of special nuclear material, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

H.9 OPTIONS TO EXTEND SERVICES

- (a) The Government has the unilateral right to extend the term of this contract for the performance of Option 1, as described in Part III, Section J, Attachment 1, Subpart III. Option 1 may be exercised by written notice to the Contractor prior to the expiration of the base contract period of performance. However, the Government shall provide the Contractor a preliminary written notice of its intent to exercise Option 1 at least 180 days prior to initiation of Option 1. The preliminary notice does not commit the Government to an extension.

Upon receipt of the Government's preliminary written notice to exercise Option 1, the Contractor shall enter into good faith negotiations to reach agreement on the cost (including fee and incentive arrangement, if any) for performance of the work for Option 1, and mutually agreeable contract terms and conditions for performance of the option; provided, however, that the Contractor must accept those terms and conditions applicable to Option 1 contained herein, and any additional terms and conditions required by statute or regulation.

- (b) The Government has the unilateral right to extend the term of this contract for the performance of Option 2, as described in Part III, Section J, Attachment 1, Subpart IV. Option 2 may be exercised by written notice to the Contractor prior to the completion of Option 1. However, the Government shall provide the Contractor a preliminary written notice of its intent to exercise Option 2 at least 180 days prior to the expiration of Option 1. The preliminary notice does not commit the Government to an extension.

Upon receipt of the Government's preliminary written notice to exercise Option 2, the Contractor shall enter into good faith negotiations to reach agreement on the estimated cost (including fee, if any) for performance of the reimbursable work under Option 2, and the date for the completion of hot start-up and transition to full operations; and mutually agreeable contract terms and conditions for performance of the option; provided, however, that the Contractor must accept those terms and conditions applicable to Option 2 already contained herein, and any additional terms and conditions required by statute or regulation. Upon DOE acceptance of the Contractor's Certification of Successful Completion of Hot Start-up and Transition to Full Operations of the MOX Fuel Fabrication Facility in accordance with the Functional and Operability Testing Plan, the costs for the remaining effort under Option 2 shall be in accordance with Clause H.11, Cost Responsibility After Completion of Hot Start-Up and Transition to Full Operations. In addition, a payment shall be made either by the Contractor to the Government or by the Government to the Contractor, as specified in Clause H.12, Plutonium Disposition Sharing Formula After Transition to Full Operations of the MOX Fuel Fabrication Facility.

- (c) The Government has the unilateral right to extend the term of this contract for the performance of Option 3, as described in Part III, Section J, Attachment 1, Subpart V. Option 3 may be exercised by written notice to the Contractor prior to completion of Option 2. However, the Government shall provide the Contractor a preliminary written notice of its intent to exercise Option 3 at least 180 days prior to the expiration of Option 2. The preliminary written notice does not commit the Government to an extension.

Upon receipt of the Government's preliminary written notice to exercise Option 3, the Contractor shall enter into good faith negotiations to reach agreement on mutually agreeable contract terms and conditions for performance of the option; provided, however, that the Contractor must accept those terms and conditions applicable to Option 3 contained herein, and any additional terms and conditions required by statute or regulation. The cost for such work shall be as specified in clause H.15, Deactivation, paragraph (a).

- (d) The total duration of this contract, including all of the options which the Government may choose to exercise under this clause, shall not extend beyond December 31, 2023.

H.10 CONSTRUCTION PROHIBITION

No construction work shall be awarded to the firm that designs the MOX Fuel Fabrication Facility or its subsidiaries or affiliates, except with the approval of the Secretary or his authorized representative.

H.11 COST RESPONSIBILITY AFTER COMPLETION OF HOT START-UP AND TRANSITION TO FULL OPERATIONS

Notwithstanding any other provision of this contract, upon DOE acceptance of the Contractor's Certification of Successful Completion of Hot Start-Up Testing and Transition to Full Operations of the MOX Fuel Fabrication Facility in accordance with the Functional and Operability Testing Plan, all costs necessary to complete the Statement of Work under Option 2, with the exception of the costs listed below, shall not be reimbursed to the Contractor. After Hot Start-Up Testing and Transition to Full Operations, those costs incurred by the Contractor which would otherwise be allowable under the cost principles contained in Federal Acquisition Regulation (FAR) Subpart 31.2 and Department of Energy Acquisition Regulation (DEAR) Subpart 931.2 are limited to the following except as provided for in Clause H.12:

- (1) Increased operating and capital improvement costs, as approved in advance by the Contracting Officer, incurred by the Contractor at the MOX Fuel Fabrication Facility as a result of statutory or regulatory changes.
- (2) Increased operating and capital improvement costs identified in an approved Mission Reactors System Modification Plan or, as approved by the Contracting Officer, incurred by the Contractor at the mission reactors as a result of statutory or regulatory changes or NRC direction which are directly related to the use of MOX fuel at the mission reactors.
- (3) Costs associated with the replacement of mission reactors to perform irradiation services, as provided in Clause H.14 of this contract.
- (4) Costs associated with changes made pursuant to the changes clause or other provisions of this contract.
- (5) Costs for which the Contractor may be reimbursed or indemnified under the clause of this contract entitled "Nuclear Hazards Indemnity Agreement."
- (6) Any increased costs, as approved in advance by the Contracting Officer, incurred by the Contractor as the result of supplying its mission reactors with replacement LEU fuel if such costs are caused directly by (a) a delay or a failure of DOE to deliver to the Contractor plutonium oxide at the rate of 3.5 Mt Pu per year on a schedule agreed to by DOE and the Contractor or, (b) the plutonium oxide received by the Contractor is in a condition not suitable for its intended use.
- (7) Any increased costs, as approved by the Contracting Officer, incurred by the Contractor as a result of a delay or failure by the Government to deliver MOX fuel to a mission reactor if such costs are caused solely by the Government.

- (8) Any increased cost, as approved in advance by the Contracting Officer, incurred by the Contractor for uranium fuel in a partial MOX fuel reload batch above that which would be used in an all uranium core with the same design energy.

H.12 PLUTONIUM DISPOSITION SHARING FORMULA AFTER TRANSITION TO FULL OPERATIONS OF THE MOX FUEL FABRICATION FACILITY

A payment shall be made either by the Contractor to the Government or by the Government to the Contractor, as described below, no later than 45 days following each annual anniversary date of DOE acceptance of the Contractor’s Certification of Successful Completion of Hot Start-Up Testing and Transition to Full Operations in accordance with the Functional and Operability Testing Plan. In the event the Government makes a payment to the Contractor, such payment shall not exceed the Government’s maximum liability specified in subparagraph (b) below. The amount of payment shall be subject to adjustment based on Government audit.

(a) Payment Formula

$$M = (f \times \text{LEU Fuel Offset}) - (\text{MOX Fuel Fabrication Cost} + \text{Annual Fee})$$

where:

“M” is the difference between the Contractor's value of displaced LEU fuel (f x LEU Fuel Offset) less the MOX Fuel Fabrication Cost and the Annual Fee paid to the Contractor.

“f” is the fixed fraction (), which, when multiplied by the LEU Fuel Offset, establishes the Contractor's value of displaced LEU fuel.

The “LEU Fuel Offset” is the aggregate value of all LEU fuel displaced during the previous 12 months by MOX fuel in each reload. The value of the LEU fuel shall be determined based on an all-LEU reload design utilizing established industry standard values from (_____*) for uranium feed, conversion, separative work units, and fuel fabrication rates. The Contractor shall submit, for Contracting Officer approval, an algorithm for determining the value of an all-LEU reload no later than the commencement of Option 2. This algorithm shall directly relate to the algorithm for the determination of the LEU penalty as described in item (8) of Clause H.11.

*to be negotiated by the parties no later than 60 days after the commencement of Option 2.

The “MOX Fuel Fabrication Cost” is defined as the sum of all costs (exclusive of any fee paid by DOE to the Contractor) incurred by the Contractor which would otherwise be allowable under FAR 31.2 and DEAR 931.2 in operating the MOX FFF, excluding reimbursed costs specified in Clause H.11, during the previous 12 month period.

The “Annual Fee” consists of: (1) a fixed-fee amount for managing the provision of fuel fabrication and irradiation services; and (2) an incentive fee amount based on achieving cost efficiencies while assuring the health and safety of workers and the community and the protection of the environment in the operation of the MOX Fuel Fabrication Facility; payable on an annual basis, commencing with the first twelve month period after DOE acceptance of the Contractor’s “Certification of Successful Completion of Hot Start-Up and Transition to Full Operations of the MOX Fuel Fabrication Facility” in accordance with the “Functional and Operability Testing Plan”.

In accordance with paragraph (b) of Clause H.9, Options to Extend Services, the Contractor shall propose for Contracting Officer consideration, a fixed-fee amount to be paid for the term of Option 2, apportioned equally on an annual basis, and an incentive fee proposal for achieving cost efficiencies while assuring the health and safety of workers and the community and the protection of the environment in the operation of the MOX Fuel Fabrication Facility, which will be determined on an annual basis.

If the value of M is positive, the Contractor shall pay the Government 90% of the value of M.

If the value of M is negative, the Government shall pay to the Contractor the difference between zero and the negative amount subject to the Government's maximum liability as specified in subparagraph (b) below.

If the value of M is zero, no payment will be made by either the Government or the Contractor.

(b) Maximum Liability of the Government

If the payment formula in subparagraph (a) above results in a negative value for M for a 12-month period, any related annual Government payment to the Contractor may be less than but shall not exceed a maximum payment liability of the Government, which amount is to be negotiated on a timely basis by the parties.

A methodology to determine the maximum payment liability of the Government, which is dependent upon market prices for LEU in order to account for the

economics of the use of LEU fuel versus MOX fuel, shall be submitted by the Contractor to the Contracting Officer for consideration, no later than the commencement of Option 2. The proposed methodology shall take into account the following :

- (1) A range of market prices for LEU over which the Contractor may request payment under this clause.
- (2) The MOX Fuel Fabrication Cost such that:
 - (i) For the 12-month period commencing with the DOE's Acceptance of the Contractor's Certification of Successful Completion of Hot Start-Up Testing and Transition to Full Operations in accordance with the Functional and Operability Testing Plan, the Contractor shall propose a base MOX Fuel Fabrication Cost because no actual cost data will be available for the previous 12-month period.
 - (ii) For each subsequent 12-month period, the MOX Fuel Fabrication Cost shall be based on the actual MOX Fuel Fabrication Cost for the previous 12-months taking into account variable factors such as throughput and escalation of costs.
- (3) The Annual Fee established in subparagraph (a) above.

H.13 FUEL FABRICATOR TO PERFORM FUEL FABRICATION SERVICES

The Contractor expressly warrants that Framatome Cogema Fuels (or any subsidiary of Framatome Cogema Fuels established to meet the requirements of FOCI mitigation) (1) shall be the proposed NRC licensee for the MOX Fuel Fabrication Facility, and (2) subject to receipt of NRC licensing, shall provide the fuel fabrication services required in the Statement of Work.

If necessary, the Contractor may propose a replacement Fuel Fabricator acceptable to the Contracting Officer and subject to NRC approval. All costs associated with the replacement of the Fuel Fabricator are unallowable under the contract. The Contracting Officer will require at least a one year advance notice of the Contractor's intention prior to the proposed replacement. The incumbent Fuel Fabricator can not be replaced during hot start-up or transition to full operations during Option 2.

In order to assist the Contracting Officer in determining the acceptability of the proposed replacement Fuel Fabricator, the Contractor shall provide: (1) a justification fully explaining why the proposed replacement is necessary; (2) a schedule for obtaining the required NRC license transfer approvals, if required for the proposed replacement to

operate the MOX Fuel Fabrication Facility; (3) a detailed plan for transition from the incumbent Fuel Fabricator to the proposed replacement Fuel Fabricator including, at a minimum: an explanation of how all administrative, operational, safeguards and security, and safety functions will be specifically transitioned; an assessment of the impacts of the change on the MOX fuel fabrication; a schedule for the transition; and an explanation of how the Contractor will ensure that the replacement does not jeopardize the mission schedule. The Contractor shall also provide adequate information to permit an assessment of the past experience and performance of the proposed Fuel Fabricator relative to the remaining portions of the Statement of Work for the MOX fuel fabrication services. The Contracting Officer's approval of a replacement Fuel Fabricator is required. The Contracting Officer will require 60 days to review the information provided. Should the information provided by the Contractor be insufficient for the Contracting Officer to make a decision, the 60 day period may be extended, at the Contracting Officer's discretion, until the Contractor has provided adequate information and the Contracting Officer has reasonable time to evaluate such information.

Until a replacement Fuel Fabricator is approved by the Contracting Officer and the contract modified as necessary, the incumbent Fuel Fabricator shall continue to perform fuel fabrication services. Failure of the Contractor to provide an approved Fuel Fabricator shall be considered a breach of this contract.

H.14 MISSION REACTORS TO PERFORM IRRADIATION SERVICES

The Contractor expressly warrants that Duke Power Company and Virginia Electric and Power Company shall, subject to regulatory approval, provide the irradiation services required in the Statement of Work utilizing the following NRC licensed commercial light water reactors operating in the United States: Catawba Nuclear Station Unit 1, Catawba Nuclear Station Unit 2, McGuire Nuclear Station Unit 1, McGuire Nuclear Station Unit 2, North Anna Unit 1 and North Anna Unit 2.

The Contractor may only propose to replace a mission reactor if: (1) the reactor has been shutdown for economic reasons; or (2) the NRC or the utility company has required the reactor to be shutdown for safety reasons and, in either case, the shutdown will preclude accomplishment of the plutonium disposition mission schedule. Costs associated with the replacement of such mission reactors will be reimbursable in accordance with clause H.3, Cost Principles For Commercial Organizations.

Should a mission reactor need to be replaced for the reasons stated above, the Contractor shall propose a replacement mission reactor to the Contracting Officer. The proposal shall include: (1) a full explanation of why the replacement is necessary; (2) a schedule for obtaining the NRC license amendments, Public Utility Commission approvals, and any necessary Federal, state or local permits necessary to allow MOX operations to proceed in the proposed mission reactor; (3) a schedule for all modifications to the proposed mission reactor and site facilities to meet the technical requirements of the Statement of Work; (4) the proposed mission reactor's safety and enforcement records

over the past five years, including the number and type of NRC violations (fines and penalties); (5) whether the proposed mission reactor has been placed on the NRC watch list or has been shut down or derated by the NRC; (6) the proposed mission reactor's occupational safety and health violations (injuries and loss of work days) over the past five years; (7) the proposed mission reactor's compliance with all other environmental laws and regulations, including all Notices of Violations, over the past five years; (8) the proposed mission reactor's relationships with interested parties (i.e. the general public, Public Utility Commission, other regulatory agencies, and public interest groups), including their ability to successfully address and resolve concerns raised by such parties; (9) the proposed mission reactor's capacity performance over the past five years; (10) the proposed mission reactor's operational performance as indicated in the SALP and in a summary of INPO evaluations; and (11) information demonstrating the proposed mission reactor's financial viability.

The Contracting Officer must approve the Contractor's proposed replacement mission reactor, and the contract appropriately modified, before the Contractor may utilize the replacement mission reactor. Failure of the Contractor to provide an approved replacement mission reactor sufficient to accomplish the plutonium disposition mission schedule shall be considered a breach of this contract.

H.15 DEACTIVATION

- (a) DOE shall pay the Contractor \$10 million on a fixed price basis (in 1998 dollars adjusted annually by the DOE Departmental Price Change Index for Defense Programs and General Construction) for completion of the work specified in the MOX Fuel Fabrication Facility Deactivation Plan and the NRC license. Payment shall be made based on milestones negotiated by the parties. Should the actual cost of completing the work exceed this amount, the Contractor shall be responsible for paying the additional cost. This \$10 million payment represents DOE's total liability for the deactivation of the MOX Fuel Fabrication Facility.
- (b) DOE shall have no liability whatsoever for the decontamination and decommissioning of the reactors used by the Contractor for the irradiation of test/demonstration fuel assemblies and pins, and the mission reactors used for the irradiation of MOX fuel and the associated reactor facilities.

H.16 AVOIDANCE OF DUPLICATION OF EFFORT

The Contractor shall use its best efforts to utilize existing information, as well as data, plans, and calculations developed in support of NRC licensing for both the MOX Fuel Fabrication Facility and irradiation services to fulfill the deliverables required in the Statement of Work.

H.17 RESPONSIBILITY OF THE CONTRACTOR FOR ERRORS OR DEFICIENCIES

- (a) The Contractor shall be responsible for ensuring the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished under this contract.
- (b) The Contractor shall be responsible for ensuring the correction or revision of any errors or deficiencies in the designs, drawings and other services furnished under this contract, and making any necessary replacements. Except as provided in paragraph (c) below, the allowability of the cost of any such correction, revision or replacement shall be determined as provided in the clause of this contract entitled "Allowable Costs and Payment (Alternate II)," but no additional fee shall be payable with respect thereto. If the Contractor fails to proceed with reasonable promptness to perform such correction, revision, or replacement, the Government may take one or more of the following actions: (1) by contract or otherwise perform such correction, revision or replacement and charge to the Contractor any increased cost occasioned the Government thereby, or (2) reduce any fixed fee payable under the contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (3) terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee, shall be deemed to be a dispute within the meaning of the clause of this contract entitled "Disputes."
- (c) Notwithstanding the provisions of paragraph (b) above, the Government may, at any time, require the Contractor to remedy by correction, revision or replacement, without cost to the Government, any errors or deficiencies in the designs, drawings and other services furnished under this contract if such errors or deficiencies are due to fraud, lack of good faith, or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of the Contractor's managers, superintendents, or other equivalent representatives, who have supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at the location where this contract is being performed.
- (d) Notwithstanding the provisions of paragraph (b) above, neither the Government's review, approval or acceptance of, nor payment for, any of the services required

under this contract shall be construed to operate as a waiver of any rights under this contract or any cause of action arising out of the performance of this contract.

H.18 STANDARD INSURANCE REQUIREMENTS

In accordance with the clause entitled "Insurance-Liability to Third Persons," the following kinds and minimum amounts of insurance are required to be maintained by the Contractor during the performance of this contract:

- (a) Workers' Compensation and Employer's Liability Insurance. Employer's liability insurance in the amount of \$500,000.00
- (b) General Liability Insurance. Bodily injury liability coverage written on the comprehensive form of policy may be obtained up to a maximum amount of \$25,000,000.00 per occurrence.
- (c) Automobile Liability Insurance. Coverage shall be on the comprehensive form of policy. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$500,000.00 per person and \$1,000,000.00 per occurrence for bodily injury and \$500,000.00 per occurrence for property damage.
- (d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.
- (e) All insurance policies carried by the Contractor shall include the Government and, where appropriate, the Management and Operating Contractor of the DOE Host Site, as named insureds.

H.19 INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF BIDDERS/OFFERORS

The Representations, Certifications, and Other Statements of Bidders/Offerors, completed by the Contractor, dated 9/4/98 and 12/16/98, are hereby incorporated by reference and made a part of this contract.

H.20 REACTOR OPERATING LICENSE EXTENSION

The Government shall not be liable for any costs associated with the extension of any operating license for any commercial light water reactor used for irradiation services under this contract.

H.21 WORK AUTHORIZED PRIOR TO RECORD OF DECISION

Until such time as the Record of Decision for the Surplus Plutonium Disposition Environmental Impact Statement is issued by DOE, the Contractor shall be limited to performing the following activities of the Statement of Work, as authorized by the Contracting Officer, subject to the limitations of Section B.2 “Estimated Cost, Fixed Fee, Obligation of Funds and Financial Limitations” of this contract.

a. MOX Fuel Fabrication Facility:

- SOW Paragraph II.A.1.b.(1) “Initial Preliminary Design”.
- SOW Paragraph II.A.2. “MOX Fuel Fabrication Facility Long Lead Time Procurement Plan”.
- SOW Paragraph II.A.4. “Regulatory Management” excluding all site specific activities.
- SOW Paragraph II.A.5. “Facility Quality Assurance Plan”.
- SOW Paragraph II.A.6. “Constructability Review” excluding all site specific activities.
- SOW Paragraph II.A.8. “Deactivation Plan” excluding all site specific activities.
- SOW Paragraph II.A.9. “MOX Fuel Safeguards Plan” excluding all site specific activities.
- SOW Paragraph II.A.10. “MOX Fuel Security Plan” excluding all site specific activities.

b. Fuel Qualification:

- SOW Paragraph II.B.2. “Fuel Qualification Plan” excluding all DOE-site specific activities.

- SOW Paragraph II.B.3. “Recommendation for a DOE Host Site for Fabrication of MOX Test/Demonstration Fuel.”
 - SOW Paragraph II.B.6. “Fuel Qualification Long Lead Procurement Plan.”
 - SOW Paragraph II.B.7. “Fresh MOX Fuel Assembly and Pins Shipping Package.”
- c. Irradiation Services:
- All Elements of SOW Paragraph II.C. “Irradiation Services” excluding SOW paragraph II.C.6. “Test/Demonstration Fuel Irradiation.”
- d. Project Management and Administration:
- SOW Paragraph II.D.1. “Project Planning, Control and Reporting.”
 - SOW Paragraph II.D.2. “Outreach Programs” excluding all site specific activities.
 - SOW Paragraph II.D.3. “SNM Transportation” excluding all site specific activities as they relate to the location of the MOX Fuel Fabrication Facility and the location of Fuel Qualification activities.

H.22 NON-INTERFERENCE WITH NRC LICENSING REQUIREMENTS

DOE shall not interfere with the responsibility of the Licensee to operate the MOX Fuel Fabrication Facility in accordance with its NRC license or the operations of any NRC licensed commercial light water reactors.

H.23 VALUE ENGINEERING

The Value Engineering clause at FAR 52.248-1, “Value Engineering (MAR 1989)”, shall apply to those elements of the Statement of Work that relate to the provision of supplies or services; the Value Engineering clause at FAR 52.248-2 “Value Engineering -- Architect-Engineer (MAR 1990)” shall apply to those elements of the Statement of Work that apply to the provision of design services for the MOX Fuel Fabrication Facility; and the Value Engineering clause at FAR 52.248-3, “Value Engineering -- Construction (MAR 1989)” shall apply to those elements of the Statement of Work that apply to construction services. The Contractor shall flow down the respective Value Engineering clauses to those subcontractors which are performing the respective elements of the Statement of Work.

H.24. RIGHT TO LEASE

The Contractor agrees to lease from DOE the real property associated with the MOX Fuel Fabrication Facility (including the land and improvements thereon) at the DOE Host Site for \$1.00 per year, if DOE, in its sole discretion chooses to lease the MOX Fuel Fabrication Facility. DOE will negotiate a lease with the Contractor that will be consistent with the terms and conditions of this contract as well as any additional terms and conditions required by statute or regulation.

H.25. TITLE TO MISSION REACTOR MODIFICATIONS

Title to any improvement made by the Contractor to the real property at mission reactors and site facilities, which are necessary to support the irradiation of MOX fuel, shall vest in the Contractor. Title to any personal property acquired by the Contractor for use at mission reactors and site facilities, which are necessary to support the irradiation of MOX fuel, shall vest in the Contractor if such personal property must be permanently affixed to the real property and cannot be removed without serious damage either to the real property or to the personal property. DOE shall not divert, terminate or limit the Contractor's use of such real or personal property.

H.26. PAYMENT OF NRC FEES AND OVERSIGHT CHARGES

DOE shall directly reimburse the NRC for any fees and oversight charges assessed by the NRC for licensing and oversight of: (1) the Fresh MOX Fuel Transportation Package, (2) the MOX Fuel Fabrication Facility, including IAEA support, and (3) for any licensing fees or oversight charges related solely to the irradiation of MOX fuel at the mission reactors.

H.27. PERFORMANCE GUARANTEE

The Performance Guarantee, included as Attachment J-11 to this contract, is incorporated into and made a part of this contract.

H.28. PERFORMANCE AND PAYMENT BONDS - CONSTRUCTION

The Contractor shall insert a clause substantially the same as the clause contained in FAR 52.228-15, Performance and Payment Bonds - Construction, in subcontracts for construction expected to exceed \$100,000.00.

H.29. MAINTENANCE OF PROPRIETARY DATA

The Contractor shall maintain a repository in the United States for all limited rights data and restricted computer software used under this DOE Contract Number DE-AC02-99CH10888 (hereinafter referred to as Contract), and the Government shall have access to such limited rights data and restricted computer software pursuant to the terms of the Rights in Data – Facility clause of this Contract, for a period of ten (10) years after completion of this Contract or any extension thereof, or any follow-on or related agreement for construction or operation of the facility, or for such shorter period as directed by the Contracting Officer. It is anticipated that such repository shall be maintained by Cogema Inc. on behalf of Contractor and licensors, Cogema and Belgonucleaire.

H.30. TECHNOLOGY FEE CONSIDERATION

Although limited rights data and restricted computer software will be used during the Base Contract (e.g., to support fuel qualification) subject to the terms of the Rights in Data - Facility clause of this Contract, the Contractor has agreed that

for disclosure or use of data, including

limited rights data and restricted computer software, under the Base Contract, nor shall any charges be allowable as a result of claims arising from patents relating to performance of the Base Contract, including relevant permitting and licensing activities and evaluation of the results of the Base Contract. However, before completion of the Base Contract, it is anticipated that the parties will negotiate a mutually acceptable agreement for use of all limited rights data and restricted computer software by the Contractor, the Government, or third parties, as is necessary for the design and subsequent construction, operation and use of the MOX Fuel Fabrication Facility and provision of the MOX fuel fabrication services contemplated by this Contract, with mutually agreed compensation to be payable upon use or other contingency after completion of the Base Contract as agreed by the parties. Such agreement will also provide for royalties or other fees for patent rights allowable for subsequent activities pursuant to DEAR 952.227. Therefore, the Contractor agrees that it will grant the Government and responsible third parties, on reasonable terms and conditions to be negotiated by the parties, a nonexclusive license, with the right to grant sublicenses, in any (i) patents, (ii) technical data, including limited rights data and restricted computer software; and (iii) limited rights in any other intellectual property rights; as may be necessary for the design, construction, operation and use of the MOX Fuel Fabrication Facility and provision of the MOX fuel fabrication services contemplated by this Contract. The parties acknowledge that any compensation for such patents, technical data, including limited rights data and restricted computer software, and other intellectual property rights shall be separate and distinct from any fee for contract performance. The parties further agree that in the event of any dispute or controversy concerning the use of the Contractor's or its related companies' limited rights data and restricted computer software, neither the Contractor nor its related companies

the Government or its contractors from using such data and

computer software for the design, construction, operation and use of the MOX Fuel

Fabrication Facility and provision of the MOX fuel fabrication services contemplated in this Contract, or to relieve the Contractor from its obligation to maintain a repository for such data and computer software in the United States; provided, however, that such limitation shall not be construed to prevent the Contractor from recovering compensation from the Government for such use.

H.31. DISPOSITION OF INTELLECTUAL PROPERTY - FAILURE TO COMPLETE CONTRACT PERFORMANCE

Subject to the above TECHNOLOGY FEE CONSIDERATION clause, the following provisions shall apply in the event the Contractor does not complete contract performance, including Options 1 and 2 for construction and operation of the facility,

- (a) Regarding technical data and other intellectual property, DOE may have access to and make copies of all technical data, including limited rights data and restricted computer software and data and software obtained from subcontractors, licensors, and licensees, necessary to operate and use the MOX Fuel Fabrication Facility and provide the MOX fuel fabrication services contemplated by this Contract, subject to the Rights in Data - Facility clause of this Contract, as well as the designs, operations manuals, flowcharts, software, etc., and may take possession of construction work in progress, completed facilities, equipment and other property and information necessary for performance of the MOX fuel fabrication services and operation and use of the MOX Fuel Fabrication Facility in conformance with the purpose of this Contract. Limited rights data and restricted computer software will be protected in accordance with the Rights in Data - Facility clause.
- (b) The Contractor agrees to and does hereby grant to the Government (i) an irrevocable, nonexclusive, paid-up license to practice or to have practiced by or for the Government at the MOX Fuel Fabrication Facility, in and to any inventions or discoveries, regardless of when conceived or actually reduced to practice (ii) limited rights in any other intellectual property owned or controlled by the Contractor, regardless of when acquired by the Contractor, at any time through completion of this Contract so long as such invention, discovery or data is utilized in performance of the MOX fuel fabrication services and operation and use of the MOX Fuel Fabrication Facility or which covers articles, materials, or products manufactured at the MOX Fuel Fabrication Facility in conformance with the purpose of this Contract, and (iii) a right to transfer such license and limited rights with the transfer of that MOX Fuel Fabrication Facility; provided, however, that such license and limited rights may be utilized exclusively for the design, construction, operation and use of the MOX Fuel Fabrication Facility and provision of the services contemplated in this Contract; and provided further, 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,

H.33 RESTRICTION ON DISCLOSURE OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE TO FOREIGN GOVERNMENTS

Since any Limited Rights Data or Restricted Computer Software is intended to be used in conjunction with the MOX Fuel Fabrication Facility and provision of MOX fuel fabrication services contemplated by this contract and there is no intent to convey such data to any foreign government, Limited Rights Data and Restricted Computer Software will not be disclosed to a foreign government without the Contractor's prior permission.

H.34 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The Contractor or awardee 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 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.35 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS—SENSE OF CONGRESS

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.