

**CUSTOMER CONTRACT REQUIREMENTS  
COAL ENERGY RESOURCES  
CUSTOMER CONTRACT DE-FC26-04NT42237 (DOE-NETL)**

**CUSTOMER CONTRACT REQUIREMENTS**

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31.

The following prime contract requirements apply to this Purchase Contract:

A. Seller shall comply with all requirements of "subrecipients" in accordance with DOE Assistance Regulations of Title 10, Code of Federal Regulations, Part 600. This set of regulations may be found at: <http://ecfr.gpoaccess.gov>.

**B. Compliance with Buy American Act (Mar 2004)**

Seller agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c).

**C. Notice Regarding The Purchase Of American-Made Equipment And Products**

To the greatest extent practicable, all equipment and products purchased with funds made available to Seller under this Purchase Contract should be American-made.

**D. Lobbying Restriction (Interior Act FY 2004) (Mar 2004)**

Seller agrees that none of the funds obligated under this Purchase Contract shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation. A copy of the DOE "Lobbying Brochure" which provides a summary of the statutory and regulatory restrictions regarding lobbying activities for Federal contractors can be found at

<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Lobbying +Brochure?OpenDocument>

**E. Reporting (Nov 1998)**

Failure to comply with the reporting requirements of the work required by this Purchase Contract shall be considered material noncompliance with the terms of this contract.

**F. Hazardous Wastes Manifests And Labels (Mar 2003)**

Seller shall not identify, on wastes manifests or container labels or otherwise, the DOE or the NETL as the owner or generator of hazardous wastes without written permission of Buyer.

**G. PERMITS AND LICENSES (AUG 1999)**

Within forty-five (45) days of award, Seller shall submit to Buyer a list of Environmental, Safety & Health approvals that, in Seller's opinion, shall be required to complete the work under this Purchase Contract. The list shall include the topic of the approval being sought, the approving authority, and the expected submittal/approval schedule. Seller shall notify Buyer as such specific items are added or removed from the list and processed through their approval cycles.

**In all the following clauses, the term "Patent Counsel" refers to: Intellectual Property Law Division, U.S. Department of Energy Chicago Operations Office 9800 South Cass Avenue Argonne, IL 60439 Any reference to "contractor" or "recipient" shall mean "Seller" and any reference to "contract" or "subcontract" shall mean "this Purchase Contract." Seller shall include intellectual property clauses in any subcontract it awards in accordance with requirements of the clauses in this section and of 10 CFR Parts 600.136 or 600.325 as appropriate.**

**H. Confidential Business Information (Jan 2004)**

Information represented by Seller as being confidential business information, and which does not include "Technical Data" as that term is defined in the "Rights in Data" clause in this contract, shall be withheld from disclosure outside the U.S. Government to the extent permitted by law. Such information shall be stamped with the following legend and no other:

**CONFIDENTIAL BUSINESS INFORMATION**

The Recipient considers the material furnished herein to contain confidential business information which is to be withheld from disclosure outside the U.S. Government to the extent permitted by law.

**I. 52.227-1 Authorization And Consent. (Jul 1995) - Alternate I (Apr 1984)**

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**J. 52.227-2 Notice And Assistance Regarding Patent And Copyright Infringement. (Aug 1996)**

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

**K. Patent Rights (Large Business Firms) -- No Waiver (Oct 2003)**

(a) Definitions

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

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

et seq.).

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

Subject invention, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of Principal Rights

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

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum Rights Acquired by the Government

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government: A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); "march-in rights" as set forth in 37 CFR 401.14(a)(J); preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request, no more frequently than annually, on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(5); and such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum Rights to the Recipient

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

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention Identification, Disclosures, and Reports

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under

- this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
- (2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that it was not so made.
  - (3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.
  - (4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.
  - (5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
- (f) Examination of Records Relating to Inventions
- (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether -
    - (i) Any such inventions are subject inventions;

- (ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;
    - (iii) The Recipient and its inventors have complied with the procedures.
  - (2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.
  - (3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.
- (g) Subaward/Contract
  - (1) The recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subaward/contract is subject to an Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.
  - (2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient:
    - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
    - (ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.
  - (3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.
  - (4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.
  - (5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.
- (h) Atomic Energy
  - (1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.
  - (2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

## (i) Publication

It is recognized that during the course of the work under this agreement, the Recipient or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

## (j) Forfeiture of Rights in Unreported Subject Inventions

- (1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient:
  - (i) Files or causes to be filed a United States or foreign patent application thereon; or
  - (ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.
- (2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) of this clause, the Recipient:
  - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer, or
  - (ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy of the Contracting Officer; or
  - (iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.
- (3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

L. Rights In Data -- Programs Covered Under Special Data Statutes (Oct 2003)

## (a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

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

Form, fit, and function data, as used in this clause, means data relating to items, components,

or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected data, as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being protected data by a party to the award.

Protected rights, as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

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

(b) Allocation of Rights

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in -
  - (i) Data specifically identified in this agreement as data to be delivered without restriction;
  - (ii) Form, fit, and function data delivered under this agreement;
  - (iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and
  - (iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.
- (2) The Recipient shall have the right to -
  - (i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;
  - (ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;
  - (iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and
  - (iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

- (c) Copyright
- (1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.
  - (2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in subparagraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.
  - (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.
- (d) Release, Publication and Use of Data
- (1) The Receipt shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
  - (2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
- (e) Unauthorized Marking of Data
- (1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
    - (i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
    - (ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period

- (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
- (iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- (f) **Omitted or Incorrect Markings**
- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient -
- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The Contracting Officer may also:
- (i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
- (ii) Correct any incorrect notices.
- (g) **Rights to Protected Data**
- (1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of

this clause.

**PROTECTED RIGHTS NOTICE**

These protected data were produced under agreement no. DE-FC26-04NT42237 with the U.S.

Department of Energy and may not be published, disseminated, or disclosed to others outside the Government for a period of five (5) years from the date the data was developed. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice).

- (2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:
- (a) For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or
  - (b) To subcontractors or other team members performing work under the Government's Power Systems Advanced Research program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.
- (3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.
- (a) At the end of the protected period;
  - (b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;
  - (c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or
  - (d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.
- (4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data:
- The following unlimited rights data will be provided in the Topical and Final Reports:  
(insert)
- (5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).
- (h) **Protection of Limited Rights Data**  
When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.
- (i) **Subaward/Contract**  
The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the

Contracting Officer and not proceed with subaward/contract award without further authorization.

(j) **Additional Data Requirements**

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

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

M. Limited Rights Data (Jan 2004)

1. The limited rights data subject to the "Rights in Data" clause in this award are listed below. This listing of data, which are asserted by the Recipient to be limited rights data, does not constitute an admission by the Government that the data is in fact limited rights data.

LIMITED RIGHTS:

(insert)

2. If a patent is issued by the United States Patent and Trademark Office or the patent office of any foreign country based on any information asserted to be limited rights data, the Government will no longer treat any data contained in such issued patent as limited rights data. In addition, if any information asserted to be limited rights data results in or becomes a Subject Invention, as that term is defined in the patent rights clause of this agreement, the Government will only treat such data as limited rights data until the Recipient has filed its initial patent application.
3. The Recipient shall not introduce or utilize any limited rights data not identified in paragraph (1) above in the performance of the award without the expressed written permission of the Contracting Officer.
4. Minimum technical data deliverable with unlimited rights. Notwithstanding any other provision of this award, the following technical data first produced under this award as a minimum, shall be delivered to the DOE with unlimited rights:

See Article L.(g)(4) above for Listing Of Unlimited Rights Data

N. Restricted Computer Software (Jan 2004)

The restricted computer software subject to the provisions of the "Rights in Data" clause in this agreement are listed below. This list of software programs, which are asserted by the Recipient to be restricted computer software, does not constitute an admission by the Government that the software is in fact restricted computer software.

The list along with a brief description of each of the software programs follows:

RESTRICTED COMPUTER SOFTWARE:

(insert)

The Recipient shall not introduce or utilize any restricted computer software not identified above without advance written notification to Buyer and Contracting Officer.

O. Protected Data (Jan 2004)

The following is a listing of data anticipated to be generated under this award that the Recipient expects will qualify as “Protected Data,” as that term is defined in the “Rights in Data” clause in this award. Incorporating this listing of data into this agreement does not constitute a guarantee by the Government that the data will in fact qualify for this designation.

Protected Data: Types of Technical Data to be generated which is expected to qualify for protection as Protected Data: (insert)

If a patent is issued by the United States Patent and Trademark Office or the patent office of any foreign country based on any information asserted to be Protected Data, the Government will no longer treat any data contained in such issued patent as Protected Data. In addition, if any information asserted to be Protected Data results in or becomes a Subject Invention, as that term is defined in the patent rights clause of this agreement, the Government will only treat such data as Protected Data until the Recipient has filed its initial patent application.

P. 52.227-23 Rights To Proposal Data (Technical). (Jun 1987)

It is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data – Programs Covered Under Special Data Statutes” clause contained in this contract) in and to the technical data contained in the Seller proposal upon which this contract is based.

Q. Right To Petition For Advance Waiver Of Subject Inventions

The DOE recognizes that, in accordance with 10 CFR Part 784, the Recipient has the right to petition the DOE to grant to the Recipient an advance waiver of patent rights in subject inventions. If such a petition is submitted by the Recipient and such a waiver is granted by the DOE Patent Counsel, the DOE shall modify this agreement to delete the patent rights clause titled “Patent Rights (Large Business Firms) – No Waiver,” which was incorporated into this agreement on award and insert the advance patent waiver clause that the Recipient will agree upon with DOE Patent Counsel.

R. GUIDELINES FOR ORGANIZATION OF FINAL SCIENTIFIC/TECHNICAL AND TOPICAL REPORTS

The following sections should be included (as appropriate) in the final scientific/technical report and topical reports in the sequence shown. Any section denoted by an asterisk is required in all technical reports.

- TITLE PAGE\* - The Title Page of the report itself must contain the following information in the following sequence:
  - Report Title
  - Type of Report (Final Scientific/Technical or Topical)
  - Reporting Period Start Date
  - Reporting Period End Date
  - Principal Author(s)
  - Date Report was Issued (Month [spelled out] and Year [4 digits])
  - DOE Award Number (e.g., DE-FG26-04NT42237) and if appropriate, task number
  - Name and Address of Submitting Organization (This section should also contain the name and address of significant subcontractors/sub-recipients participating in the production of the report.)
- DISCLAIMER\* -- The Disclaimer must follow the title page, and must contain the following paragraph:

“This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

ABSTRACT\* - should be a brief, concise summary of the report.

TABLE OF CONTENTS\*

EXECUTIVE SUMMARY\* - this should be a well organized summary that highlights the important accomplishments of the research during the reporting period. It should be no less than one page and no more than two pages in length, and should be single spaced. This summary must be more comprehensive than the traditional “abstract.”

REPORT DETAILS - The body of the final scientific/technical or topical report should address topics such as the following:

Experimental methods: Describe, or reference all experimental methods being utilized. Also provide detail(s) about materials and equipment used. Standard methods should reference the appropriate literature, where details can be obtained. Equipment should be described only if it is not standard, or if information is not available thru the literature or other reference publications.

Results and discussions: This section should include enough relevant data, especially statistical data, to allow the project manager to justify the conclusions. Explain how the data was interpreted and how it relates to the original purpose of the research. Be concise in the discussion on how this research effort solved or contributed to solving the original problem.

Conclusion: The conclusion should not simply reiterate what was already included in “Results and Discussion” but should summarize what has already been presented, and include any logical implications of how the successes are relevant to technology development in the future. This is extremely important, since “relevancy” continues to be a criterion of the program.

GRAPHICAL MATERIALS LIST(S)  
REFERENCES  
BIBLIOGRAPHY  
LIST OF ACRONYMS AND ABBREVIATIONS  
APPENDICES (IF NECESSARY)

#### SUPPLEMENTAL GUIDELINES

Technical reporting SHALL NOT include Limited Rights Data (such as restricted, proprietary or business sensitive information). Limited Rights Data shall be submitted in a separate appendix to the technical report. This appendix SHALL NOT be submitted in an electronic format but rather submitted in ONE ORIGINAL AND THREE (3) PAPER COPIES along with the paper version of

the sanitized technical report deliverable. The appendix shall not be referenced in or incorporated into the sanitized technical report deliverable under the contract. The appendix must be appropriately marked and identified. Further, if this award authorizes the awardee under the provisions of The Energy Policy Act of 1992 to request protection from public disclosure for a limited period of time of certain information developed under this award, technical reports SHALL NOT contain such Protected EAct Information. Such information shall be submitted in a separate appendix to the technical report that is suitable for release after the agreed upon period of protection from public disclosure has expired. The appendix shall not be referenced in or incorporated into the sanitized technical report deliverable under the contract. In accordance with the clause titled "Rights in data—programs covered under special data statutes," the appendix must be appropriately marked and identified.

Company Names and Logos -- Except as indicated above, company names, logos, or similar material should not be incorporated into reports.

Copyrighted Material -- Copyrighted material should not be submitted as part of a report unless written authorization to use such material is received from the copyright owner and is submitted to DOE with the report.

Measurement Units -- All reports to be delivered under this instrument shall use the SI Metric System of Units as the primary units of measure. When reporting units in all reports, primary SI units shall be followed by their U.S. Customary Equivalents in parentheses (.). The Recipient shall insert the text of this clause, including this paragraph, in all subcontracts under this award. Note: SI is an abbreviation for "Le Systeme International d'Unites."

#### ELECTRONIC MEDIA STANDARD FOR PREPARATION OF TECHNICAL REPORTS

**PRESENTATION:** The Recipient shall submit one quality permanent paper copy for storage (permanent or alkaline paper) and an electronic version of each technical report in PDF format. **ELECTRONIC REPORTS MUST BE SUBMITTED IN THE ADOBE ACROBAT PORTABLE DOCUMENT FORMAT (PDF). REPORTS SUBMITTED IN A FORMAT OTHER THAN ADOBE WILL BE REJECTED, RETURNED AND CONSIDERED DELINQUENT.** The report must be one complete integrated file containing all text, tables, diagrams, photographs, schematics, graphs, and charts. Multiple files for various report segments are unacceptable and will be rejected. The electronic file(s) may be submitted on an ISO9660-format CD-ROM.

**FORMAT:** The electronic file(s) must be submitted on CD-ROM and labeled as follows:

DOE Award Number  
Type/Frequency of Report(s)  
Reporting Period (if applicable)  
Name of submitting organization  
Name, phone number and fax number of preparer

#### S. PROPERTY CERTIFICATE (NETL F 580.1-9)

This certificate submitted on the NETL F 580.1-9 is due immediately upon completion or termination of this Purchase Contract. The recipient must attach to this certificate a final/completion inventory of all recipient acquired real estate, equipment, and materials/supplies as specified in the appropriate 10 CFR 600 Financial Assistance Regulation.