

## **GNF NATRIUM SUBCONTRACTOR FLOW DOWN REQUIREMENTS - CONSTRUCTION**

### **Introduction**

The following terms and conditions are U.S. Government contracting flow down clauses from the prime Sodium Project ARDP Subcontractor Services Cooperative Agreement #DE-NE0009054 dated May 3, 2021 to GE Vernova Hitachi Nuclear Energy (GNF) for the development of a demonstration facility utilizing the Sodium Reactor (together with all auxiliary equipment, ancillary and associated facilities and equipment, electrical transformers, interconnection and metering facilities and all other improvements and assets and rights related thereto, the "Project"). These terms and conditions will apply notwithstanding any different or additional terms and conditions which may be negotiated by the Subcontractor and GNF. The Subcontractor must determine which clauses should be flowed down to its lower-tier subcontractor(s) and purchase orders to implement the obligations of the Subcontractor. The Subcontractor recognizes these obligations and agrees to include them in its lower-tier subcontract(s) and purchase orders, as applicable.

This Agreement incorporates one or more clauses by reference, with the same force and effect as if they were given in full text.

### **RELATIONSHIP OF THE PARTIES:**

It is intended that the referenced clauses shall apply to Subcontractor where applicable, the legal entity which contracts to the Company being Global Nuclear Fuel-Americas, LLC (GNF), under this Subcontract, in such manner as is necessary to reflect the position of Subcontractor to the Company (GNF); Company (GNF) as the legal entity issuing this Subcontract; to ensure Subcontractor's obligations to Company (GNF) and to the U. S. Government; and to enable Company (GNF) to meet its obligations under its subaward Subcontractor Agreement with TerraPower, LLC, a Subcontractor to US SFR Owner, LLC., the Prime Recipient.

### **ORDER OF PRECEDENCE:**

1. Flow Down Requirements
  - a. General Terms and Conditions – (Exhibit A)
  - b. Construction Terms and Conditions – (Exhibit B)
  - c. Special Terms and Conditions – (Exhibit C)
  - d. DOE Flow Down Provisions – (Exhibit D)

2. Purchase Order
3. Main Services Agreement (MSA), Terms of Purchase, or other commercial agreement(s)
4. Any and all Statement of Work/s

For the avoidance of doubt, to the extent of any apparent inconsistency between or among any of the contractual documents (including, but not limited to MSA, purchase order, change order, flow down requirements) the strictest of those requirements govern unless expressly stated otherwise.

## **EXHIBIT A - GENERAL TERMS AND CONDITIONS**

### **Section 1.0 - DEFINITIONS:**

When used in the Agreement, the following terms shall have the following meanings. All other capitalized terms shall have the meaning given to them elsewhere in the Agreement or 2 CFR 200.

**“Affiliate”** means, with respect to a Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such first Person; provided, however, that for purposes of this definition (except to the extent this defined term is used within the definition of “Indemnified Persons” or with respect to any limitation on any obligation or liability of Affiliates in this Agreement), Company and its equity holders and other investors (whether direct or indirect) will be deemed not to be Affiliates of one another. For purposes of this definition, “control” of a Person means the power to directly or indirectly direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or other ownership interests, by contract or otherwise, including, with respect to a corporation, partnership or limited liability company, the direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interest in a partnership or limited liability company.

**“Agreement”** means Subcontract including the documents that identify the parties’ roles and responsibilities.

**“Applicable Laws”** means all applicable statutes, laws, rules, codes, ordinances, regulations (including 2 CFR 200 and 910), decisions, orders, permits, licenses (including any license issued by the Nuclear Regulatory Commission and the license conditions imposed therein, including as a result of its review under the National Environmental Policy Act) or common law of any Governmental Entity with jurisdiction over a Party, the Parties, the Project and/or performance under this Agreement, whether now in effect or imposed or revised during the Term (including any judicial or administrative interpretation) that, in any manner, affect the Agreement, one or both of the Parties, or performance under the Agreement.

**“Background IP”** means all Intellectual Property that is: (i) owned or otherwise controlled by a Party as of the Effective Date of this Agreement (which shall include, without limitation, any patents and

patent applications pending as of the Effective Date); or (ii) results from activities which are independent from but concurrent with this Agreement including, without limitation, any Intellectual Property created, authored, developed, conceived or first actually reduced to practice during the Term of this Agreement, but not initially arising from the performance of work under, or otherwise in connection with, this Agreement.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which banks in the United States State are authorized or required to close.

“**Claiming Party**” means any Party claiming relief in connection with a Force Majeure Event

“**Claims**” means all demands, claims, suits, costs, fines, penalties, proceedings, grievances, or actions of any kind or character presented or brought against any Person, and all associated Losses.

“**Contract**” means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered thereunder.

“**Company**” or “**Contractor**” herein means Global Nuclear Fuel-Americas, LLC, a Delaware limited liability company with a place of business in Wilmington or GE-Hitachi Nuclear Energy Americas LLC (GEH) or its duly authorized representative or representatives.

“**Davis Bacon Act or DBA**” means a U.S. federal law that requires contractors and subcontractors working on federal construction projects to pay their laborers and mechanics the prevailing wage rates and fringe benefits, as determined by the Department of Labor, for the locality where the work is performed, according to the U.S. Department of Labor.

“**Defect**” or “**Deficiency**” means any condition or characteristic in supplies, construction or services provided that fails to meet the contract's quality and quantity requirements. These conditions or characteristics may be latent or manifest.

“**Deliverables**” means the deliverable project, documents or items defined in any Statement of Work or Contract.

“**DOE**” means U.S. Department of Energy

“**Effective Date**” means the date when the parties obligations become binding.

“**Execution Date**” means the date on which the parties execute and enter into an Agreement.

“**Final Inspection**” means the last inspection conducted before a project is completed or handed over to the company. It verifies that the completed work meets all the agreed-upon specifications, building

codes, and quality standards. This comprehensive check ensures that the structure and its components are safe, functional, and free of defects.

“**Force Majeure**” means an event or effect that cannot be anticipated or controlled.

“**Foreground IP**” (**Company**) means all Intellectual Property first or originally conceived, created or developed by or on behalf of one or both Parties in connection with their work under this Agreement.

“**GAAP**” means United States Generally Accepted Accounting Principles, issued and revised by the Financial Accounting Standards Board (FASB).

“**GE**” means GE Vernova Company, a Delaware corporation.

“**GNF**” means Global Nuclear Fuel-Americas, LLC, a Delaware limited liability Company.

“**Governmental Entity**” means any federal, state, local, county, city, foreign, administrative, or other governmental body, authority or entity, including any court, tribunal, arbitrator, agency, commission, legislative body, official or other instrumentality.

“**Hold Point**” has the meaning set forth in Section 12.

“**Indemnified Persons**” means the identified Party, its Affiliates, and its and their respective directors, officers, employees, representatives, agents, successors and permitted assigns.

“**Intellectual Property**” ” means all intellectual property and proprietary rights, including without limitation all rights of inventorship and authorship, inventions, patents, patent applications, and know-how, for any product, process, method, machine, manufacture, design, composition of matter, or any new or useful improvement thereof, as well as copyrights, trademark, trade dress and service mark rights and all rights in trade secrets, computer software, data and databases, and mask works.

“**Losses**” means any loss, damage, costs (including, but not limited to, court costs, attorneys’ fees, costs of investigation, costs of defense, discovery costs, expert fees and expenses) judgments, settlements, fines, assessments, penalties, sanctions, and liability.

“**Modification**” means a written amendment to this Agreement signed by an authorized representative of each Party.

“**Sodium Reactor**” means the Sodium sodium reactor technology for a demonstration plant.

“**NRC**” means the U.S. Nuclear Regulatory Commission.

“**OFAC**” means U.S. Department of the Treasury Office of Foreign Asset Control.

“**Party**” means Company and Subcontractor as referred to individually.

“**Patents**” means patented and patentable designs and inventions, design patents, utility patents, letters patent, utility models, pending patent applications, provisional applications, and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations, inter partes review proceedings, post-grant review proceedings, and renewals of such patents and applications.

“**Performance Standards**” has the meaning set forth in Section 26.

“**Person**” means any natural person, corporation, company, partnership (general or limited), limited liability company, trust or other entity (including Governmental Entities).

“**Price Anderson Act**” means PL 85-256, Section 170 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2210, as amended, and related provisions of Section 11 of the Atomic Energy Act.

“**Prime Contractor**” means a contract, Agreement or contractual action entered into directly with a Contractor by the United States for the purpose of obtaining construction, supplies, materials, equipment, or services of any kind.

“**Project**” the term “Project” shall refer to the initiative of Owner to construct, install, renew or service industrial plant or equipment at the Owner’s site (the “Project Site” or the “Site”)

“**Proprietary Information**” means know-how, trade secrets, and confidential or proprietary information, however documented and in whatever form, including, without limitation, technical information, product specifications, inventions, developments, data, charts, formulae, compositions, processes, methods, flow charts, designs, sketches, graphs, drawings, samples, research and development, manufacturing or distribution methods and processes, materials, training, quality procedures, customer requirements, price lists, market studies, business plans, client and customer lists and files, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing plans, and other business and financial information.

“**Prudent Industry Practices**” means that degree of skill and judgment and the utilization of practices, methods, and techniques and standards that are generally expected of skilled and experienced engineering firms by a significant portion of the nuclear power industry in the United States of America in light of the facts known or ought to have been known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, safety, reliability, expedition, and Applicable Laws. Prudent Industry Practice is not limited to the optimum practice, method or act to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices, methods, standards and procedures.

**“Punch List”** means a document created in the final stages of a construction project to provide a list of items that must be addressed before construction is complete and payment is issued.

**“QA Requirements”** means the applicable requirements of 10 CFR Part 50, Appendix B and interpretations specified by Company.

**“Quality Assurance Program”** means a program for the systematic monitoring and evaluation of the various aspects of a project, service, or facility to ensure that standards of quality are being met.

**“Representatives”** means, agents or representatives of a Person, its directors, officers, members, managers, employees (full time, part time, temporary or leased), subcontractors including lower tier subcontractors to the extent permitted hereunder.

**“Retention or Retainage”** means a portion of the payment withheld from a contractor or subcontractor, typically as a percentage of the invoice, until the completion and acceptance of the work.

**“Software”** means computer programs, software, including operating system and applications software, implementations of algorithms and application program interfaces, whether in source code, object code, executable, or other form, databases, and all documentation relating to the foregoing, including user-level and programmer-level documentation and manuals relating to the foregoing.

**“Subcontractor”** means any vendor, supplier, staff augmentation contractor, subcontractor or other Subcontractor of goods, construction or services retained by the Company (including all Persons retained in such manner at lower tiers) in connection with the Project. **“Lower-tier subcontractor”** means Any party entering into an agreement with the Subcontractor or any other party who has entered a Contract or Agreement with the Subcontractor, for the furnishing of supplies, construction or services required for performance of this Contract.

**“Subcontractor IP”** means all intellectual property and proprietary rights, including without limitation all rights of inventorship and authorship, inventions, patents, patent applications, and know how, for any product, process, method, machine, manufacture, design, composition of matter, or any new or useful improvement thereof, as well as copyrights, trademark, trade dress and service mark rights and all rights in trade secrets, computer software, data and databases, and mask works. This includes Subcontractor Background IP and Subcontractor Foreground IP.

**“Term”** means the period that begins on Effective Date and will remain in effect until the earlier of (i) completion of all Services and/or Construction, (ii) termination of this Agreement.

**“Third Party”** means any Person who is neither a Party nor one of their Affiliates.

“**Turn-over**” means the process of transferring a completed building or facility from the construction team to the owner or the operations and maintenance team.

” **Walk-Thru**” means an inspection of a newly built property, ensuring all aspects of the construction meet agreed-upon standards and specifications. Minor defects will be noted in a punch-list and corrected prior to a final inspection and acceptance prior to turn-over.

“**Work Product**” means all right, title and interest in and to all Deliverables, and any related documents, drawings, reports, and materials, in each case, conceived, created or developed by or on behalf of Subcontractor for Company under this Agreement. Work Product does not include Subcontractor Background IP or Subcontractor Foreground IP.

## **Section 2.0 - Responsibilities**

### **(1) REPORTING OF DEFECTS AND NONCOMPLIANCE**

This Agreement may involve the procurement of “basic components” for a nuclear facility or activity as defined by the NRC in 10 CFR Part 21. When applicable, Subcontractor shall comply with all requirements therein, including but not limited to the flow-down requirements of 10 CFR § 21.31 and all applicable notification requirements.

Subcontractor shall be responsible for reporting in writing to Company, as promptly as is reasonably practicable, whenever information is obtained reasonably indicating: (1) any failure to comply with the Atomic Energy Act, or any applicable regulation, order, or license of the Commission relating to a Substantial Safety Hazard (as defined in 10 CFR Part 21); (2) the existence of any defect found in the construction or manufacture of any item or facility (including on basic components supplied for such facility of activity), or (3) that the Quality Assurance Program (or any portions thereof) has undergone any significant breakdown which could have produced a defect in a basic component as defined in 10 CFR Part 21. Subcontractors shall have a procedure in place that addresses these evaluations and reporting responsibilities to the satisfaction of this scope of work requirement and the requirements of 10 CFR Part 21. In accordance with the requirements of 10 CFR Part 21, the requirements in this paragraph, including to submit any reports in writing to Company, shall be applicable before, during and after acceptance with respect to any Deliverable or Service.

### **(2) COMMERCIAL GRADE DEDICATION**

If Subcontractor will procure basic components (as defined in 10 CFR § 21.3), then Subcontractor shall make commercially reasonable efforts to procure those basic components from manufacturers with approved 10 CFR Part 50 Appendix B, and ASME NQA-1 Quality Assurance Programs. If subcontractors procure commercial grade items and services from non-Appendix B sub-suppliers for use in safety-related applications or procured as services or construction in support of safety-related

applications, then subcontractors shall act as the dedicating entity (as defined in 10 CFR § 21.3) and comply with the requirements of 10 CFR § 21.21(c). Controls for commercial grade dedication shall be documented in implementing procedures consistent with NQA-1 (2015 or later revisions endorsed by the NRC) subpart 2.14. These procedures shall include the required interfaces with Company to obtain the nuclear safety-related function and technical information necessary for the Dedicating Entity to develop for the dedication process. Procedures and plans for commercial grade dedication shall comply with Electric Power Research Institute (EPRI) NP-5652 (Guideline for the Acceptance of Commercial Grade Items in Nuclear Safety-Related Applications) Rev 1. They shall also comply with NRC expectations as stated in Information Notice IN 2011-01 and NRC Inspection Manual procedures IP-38703, “Commercial Grade Dedication”, and IP-43004, “Inspection of Commercial Grade Dedication Programs”.

### **(3) NON-CONFORMANCE AND DEFICIENCIES REPORTING**

3.1 All nonconformances to and deficiencies in respect of Services or Construction provided under this Agreement, including Codes and Standards identified in the design specifications or Company’s “approved documents”, with a Subcontractor-recommended disposition of “repair” or “use-as-is”, and notwithstanding whether such Services have at such time been accepted pursuant to this Agreement, shall be submitted as a deviation to Company for review and approval. Company’s approval shall be obtained prior to implementation of the proposed disposition. Nonconformances and deficiencies where Subcontract performs activities such as “scrap” or “rework” to bring the component into compliance with the contract requirements are not required to be submitted to Company for approval. Without regard for how detected, nonconformances and deficiencies which are not immediately addressed or corrected (i.e., during the relevant inspection/test/audit activity) by Subcontractor will be documented by the Subcontractor if detected by Subcontractor, or if detected by Company or a third-party inspector, and reported to Subcontractor for resolution. Subcontractors shall, as soon as possible, not extend beyond the next Business Day, physically identify the non-conforming or deficient item (e.g. marked or tagged) and when practical, segregate in accordance with Subcontractor’s procedures. Subcontractor shall conduct a review, perform timely corrective action and return it for re-inspection or acceptance of Subcontractor’s recommended disposition of the nonconformance or deficiency.

3.2 Subcontractor shall establish and maintain a report log for nonconformances and deficiencies. As a minimum, the log shall include Subcontractor or sub-subcontractor’s or Company’s name and physical address, nonconformance or deficiency date, unique identification of affected item, and disposition details. A copy of the nonconformance and deficiency log shall be provided to Company.

3.3 Subcontractor shall conduct analysis of all Project nonconformances and deficiencies to identify adverse trends. Analysis shall include hardware, documentation, and procedural deficiencies. The analysis results shall be presented to Company.

#### **(4) PERFORMANCE STANDARDS**

Subcontractor shall furnish and perform the Services in a timely, professional, competent and workmanlike manner, utilizing Prudent Industry Practices and in accordance with this Agreement (including without limitation any applicable QA Requirements and EH&S Requirements), all Applicable Laws, including without limitation: (i) using personnel with appropriate levels of skill, experience and qualifications, including, where required, licenses and certifications; (ii) coordinating the performance of the Services with the activities of Company, Prime, their Affiliates and other Persons (including other service-Subcontractors and contractors) in respect of the Cooperative Agreement and the Project (in each case, to the extent Subcontractor has knowledge thereof); (iii) maintaining compliance with the material rules, regulations and policies of Company and Prime (to the extent (x)(1) such rules, regulations and policies are identified in a Statement of Work as being applicable or (2) Company has provided notice to Subcontractor of the applicability of such rules, regulations and policies reasonably in advance of the time for compliance therewith, and (y) a copy of such rules, regulations and policies, including copies of any changes thereto (as and when applicable), has been provided to Subcontractor reasonably in advance of the time for compliance therewith); and (iv) performing to the reasonable satisfaction of Company.

4.1 Specific Materials or Accessories. To the extent any applicable Statement of Work requires any specific materials or accessories, Subcontractor shall not substitute such specific materials or accessories without the advance written consent of Company.

4.2 Statements of Work. The Parties may from time to time enter into one or more Statements of Work by agreeing in writing to do so, and the completion or termination of any Services in respect of any individual Statement of Work, including any termination in part of this Agreement (as applicable), shall not result in the completion or termination of any Services in respect of any other individual Statement of Work or any other part of this Agreement (except as expressly set forth herein); provided, the Parties acknowledge and agree that they shall use commercially reasonable efforts to ensure that the duration of any Statement of Work is contained within a single budget period.

4.3, Subcontractor shall make, retain, and provide, upon request, to Company all applicable property records as described in 2 CFR 200 "Property Standards" (2 CFR 200.310 – 2 CFR 200.316) and shall ensure that Subcontractor design, engineering, construction, testing, commissioning, operation and maintenance of the SFR Fuel Facility and the Equipment is

consistent with the applicable DOE Flowdown Provisions and any specific directions of DOE that are shared by Company with Subcontractor. Without limiting the foregoing, Subcontractor shall provide to Company (for purposes of timely filing with, or submission to, DOE), and otherwise provide or record (as applicable), any applicable reports, filings, documents and other materials required pursuant to 2 CFR 910.360 (including any UCC financing statements naming Subcontractor as a debtor and other materials described in 2 CFR 910.360(b)(4), and any reports needed by the Company.

4.4 Except to the extent that Company has taken title to the Equipment in full as provided in in the Security Agreement, Subcontractor shall bear all obligations, liabilities and duties in respect of any compensation or other amounts that become due to DOE in respect of compliance with Section 26.3 and the related DOE Facility and Equipment Property Requirements. Without limiting the generality of the foregoing sentence, prior to any such taking of title by Company, Subcontractor shall be responsible for any payments that become due to DOE in respect of any disposition, as such term is used in 2 CFR 200.311, 200.313, 200.314 and 910 and .360.

## **(5) RECORDKEEPING AND AUDITS**

5.1 Subcontractor agrees to maintain, documentation and records in accordance with 2 CFR 200.334; provided, that with respect to lower tier subcontractor only, if the applicable subcontract has an aggregate consideration less than ten thousand dollars (\$10,000), then Subcontractor's obligations in this sentence with respect to such subcontract shall be satisfied if Subcontractor maintains invoices in accordance with 2 CFR 200.334. If Company establishes uniform codes of accounts for the Project, Subcontractor shall link, and shall cause to be linked, such codes to existing task and project codes identified in the applicable Statement of Work in identifying such records and accounts.

5.2 Upon reasonable request, Subcontractor will allow Company Representatives and TerraPower (including Company's accounting firms) and/or Governmental Entity auditing agencies and personnel, during normal business hours, to inquire into and/or examine and make copies of (and in the case of Governmental Entity auditing agencies and personnel, to audit) documentation and records of Subcontractor (and, as applicable to the Project, its Affiliates and Representatives) relating to compliance or non-compliance with Applicable Laws. Subcontractor shall maintain and shall cause to be maintained by its Affiliates and Representatives (as applicable to the Project), books and records in accordance with GAAP (it being understood that only Governmental Entity auditing agencies and personnel shall have the right to undertake any formal audits) concerning the performance of and payment for the Services. Throughout the Term, and as required by 2 CFR 200.334, Subcontractor must maintain and permit Company Representatives (including Company's accounting firms) and TerraPower, during normal business hours, to inquire into, examine, and

receive corresponding documentation in respect of books and records of Subcontractor (and, if applicable to the Project, its Affiliates and Representatives) relating to invoices and payments under the Agreement and compliance with the Agreement. Any such inquiry and examination shall not be conducted in a manner to impede unreasonably Subcontractor's Services or business. If the requested records are maintained in electronic format, Subcontractor will provide its accounting and compliance records to (as applicable) Company Representatives, TerraPower and auditors in suitable electronic data format. Notwithstanding anything to the contrary in this Section, Company Representatives shall not be provided any access to materials to the extent including Subcontractor Proprietary Rates Information, any periodically compiled financial results or financial projections of Subcontractor (or of its Affiliates or Representatives) or (except to the extent reasonably necessary in connection with performance of the Services) any personally identifying information with respect to individual employees or other representatives of Subcontractor; provided, that this sentence shall not limit any access rights of (i) Company Representatives, including (subject to customary confidentiality obligations) accounting firms, to invoices, payment records and other Project-specific documentation and information which may contain information related to obligations, payments, estimates, budgets and accounts or (ii) any Governmental Entity auditing agencies and personnel; provided, further, that to the extent this Section does not provide a Company Representative with the right to inquire into, examine or copy any specific piece of information that is stored with other information with respect to which such Company Representative has such right, Subcontractor shall redact solely to the extent necessary for such Company Representative to exercise its rights hereunder.

5.3 Each Party agrees to cooperate fully with any investigation or audit by or before any Governmental Entity, and Subcontractor agrees to cooperate fully, upon request made in writing by Company, with Company, Prime and their representatives in connection with any investigation or audit by or before any Governmental Entity and related to the Project or the Cooperative Agreement. Subcontractor shall make available personnel to respond to questions arising from said audits by the relevant Governmental Entity, Company, Prime or their representatives.

## **(6) SAFETY; QUALITY ASSURANCE; AND ENVIRONMENTAL HEALTH & SAFETY**

6.1 Subcontractor is responsible for the safe performance of the Services under this Agreement. This responsibility extends to the safety of the Parties' Representatives and the safety of the public affected by the performance of the Services. These responsibilities include environmental, health and safety requirements ("EH&S Requirements") as well as quality assurance requirements.

6.2 Subcontractor is hereby notified that the delivery of suspect or counterfeit goods as part of the Services is of special concern to Company. If any Services specified in this Agreement are described using a part or model number, a product description, and/or an industry standard, Subcontractor shall assure the Services supplied meet all requirements of the latest version of the applicable manufacturer data sheet, product description, and/or industry standard unless otherwise specified in the applicable Statement of Work. If Subcontractor is not the manufacturer, Subcontractor shall assure that such Services supplied shall be: (a) made by the original manufacturer; and (b) meet the applicable manufacturer data sheet, product description or industry standard. Should Subcontractor desire to supply alternate Services that may not meet these requirements, Subcontractor shall notify Company of any such exceptions and receive Company's written approval prior to delivering the Services to Company. If Subcontractor does not receive Company's written approval, then, it will be considered a material breach of the Agreement and any limitations on damages or liability shall not apply to Subcontractor with respect to Claims arising from such breach.

## **(7) INSURANCE**

Subcontractors shall provide insurance coverage pursuant to the executed GNF Main Services Agreement (MSA), Terms of Purchase, or other negotiated commercial agreement. All insurance coverage required by federal, state, or local law, including statutory workers' compensation insurance in the minimum statutory amount. With respect to workers' compensation insurance: (i) Subcontractor specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW (or similar Applicable Law in any other relevant jurisdiction), and (ii) the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party.

### **7.1 Waiver of Right to Recovery including Subrogation**

To the extent of Subcontractor's indemnification obligations, Subcontractor hereby waives all its rights of recovery, under subrogation or otherwise, against Company and Terra Power LLC, their officers, agents and employees, and all tiers of contractors, vendors and subcontractors engaged directly by Company with respect to the Project, to the extent covered by insurance required to be provided by Subcontractor and its Lower tier subcontractor of whatever tier further waives all rights of recovery which are not covered by insurance because of deductible or self-insurance obligations relating to such insurance. Subcontractor will require all tiers of its Lower tier subcontractor, vendors and subcontractors, by appropriate written agreements, to

provide similar waivers each in favor of all parties enumerated in this paragraph. Subcontractor will require all insurance policies in any way related to the Services secured and maintained by the Subcontractor to include clauses stating each insurer will waive all rights of recovery consistent with this paragraph.

## 7.2 Additional Insurance Requirements

Company and Terra Power LLC shall be named as additional insured under the policies of insurance set forth in the executed MSA, Terms of Purchase, or other negotiated commercial agreements.

## 7.3 INSURANCE; SUPPLEMENTAL TERMS; EXCEPTIONS

7.3.0 Minimum Insurance Coverage. Subcontractor shall provide the following insurance coverage for its Services pursuant to this Agreement:

7.3.1 Workers' Compensation - all insurance coverage required by federal, state, or local law, including statutory workers' compensation insurance in the minimum statutory amount. With respect to workers' compensation claims: (i) Subcontractor specifically and expressly waives any immunity that it may be granted under any state workers' compensation act or similar Applicable Law in any relevant jurisdiction, and (ii) the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party.

7.3.2 Commercial General Liability - occurrence-based insurance including, but not limited to, premises and operations liability, products and completed operations liability, contractual liability, independent contractors' liability, and products and completed operations liability for the statute of repose, which provides for combined single limit for bodily injury and property damage in coverage amount of \$2,000,000 per occurrence, and, to the extent of Subcontractor's indemnity obligation therein, extends on a primary and noncontributory basis for all additional insureds. The additional insured requirement for Commercial General Liability and Excess/Umbrella coverages is for the duration of the Agreement and an additional twelve (12) years following acceptance of Services by Company. GL coverage shall not contain an exclusion broader than the Broad Form Nuclear Exclusion – ISO version.

7.3.3 Employer's Liability including Stop Gap Liability - \$1,000,000 bodily injury by accident, and \$1,000,000 limit for each policy.

7.3.4 Commercial Auto Liability - Combined Single Limit of \$2,000,000. Such insurance shall cover bodily injury or death and property damage arising out of ownership, rental, non-owned, maintenance or use by Subcontractor, Sub-Subcontractors, Subcontractors (or the employees of

any of the foregoing Persons) of any vehicles and of any other equipment required to be licensed for road use.

7.3.5 Professional Liability Insurance - insuring against errors and omissions arising from the design and work (including Services) on the Project by Subcontractor's architects, engineers, landscape engineers, surveyors, and any other professional (at any tier, in each case), with limits of \$5,000,000 per claim and \$10,000,000 annual aggregate. Such policy shall not contain any exclusions directed toward any types of projects, materials, services or processes involved in the Services. Coverage shall include, but not be limited to:

7.3.5.1 Limited contractual liability; and

7.3.5.2 The retroactive date for coverage will be no later than the commencement date of the Service. The policy will state that, in the event of cancellation or non-renewal, three (3) years following such cancellation or non-renewal, or otherwise as by agreement with Company.

7.4 Builders Risk – During the course of construction, Subcontractor shall maintain, or require to be maintained, property including builder's risk "all risk" property insurance -including boiler and machinery and expediting costs - during the construction phase and upon the entire designated construction facility, the Equipment, and including damage to pre-existing property. At Company's election, Subcontractor agrees to cooperate with Company in Company's efforts to procure coverage for delay in startup for the benefit of Company, the premium and any deductible for delay in startup coverage shall be the responsibility of Company. Covered perils should also include earth movement, flood and wind. Such insurance shall include Company as loss payee as its interests may appear. Any loss insured is to be adjusted with a claims adjuster mutually agreed in writing between Company, Subcontractor and the relevant insurance carrier and specifically identified in the policy as agent for Company and Subcontractor. Subcontractor shall have power to adjust and settle any loss with the insurers so long as it acts in good faith; provided, that Subcontractor shall not enter into any settlement with respect to such loss that adversely affects Company's rights without Company's prior written consent (not to be unreasonably withheld, conditioned or delayed). Losses shall be valued at the cost to replace or repair with like kind or quality.

7.5 Commercial Property – Upon agreed-upon substantial completion of construction, Subcontractor will maintain commercial property insurance including boiler and machinery, for construction and equipment on a "risks of direct physical loss" basis covering physical loss or damage to all real and personal property on a replacement cost basis and include perils for earthquake, flood, and wind. Deductibles will be borne by the Subcontractor. To the extent of

Subcontractor's indemnification obligations under this Agreement, Subcontractor agrees to waive, and will cause its insurer to waive, and does hereby waive its rights of recovery against Company and each of its officers, employees, consultants and agents including, but not limited to the board of directors (or similar governing body) and each Company Representative, as to any damage or loss which may occur to such SFR Fuel Facility and Equipment to the extent covered by insurance.

7.6 To the extent of Subcontractor's indemnification obligations under this Agreement, all liability policies, except for Professional Liability, shall include Company as additional insured, including its officers, directors, and employees and any of its subsidiaries or Affiliates. Subcontractor agrees and will cause their insurers to waive any and all rights of subrogation against the Persons identified above as additional insureds.

7.7 All policies under will be written by companies authorized to do business in the State of North Carolina (and any other relevant jurisdictions) and have a rating by Best's Key Rating Guide of at least A-VIII. Subcontractor shall provide Company with a certificate of insurance evidencing the coverages and terms required by this Agreement prior to commencing any Services.

7.8 The insurance requirements contained herein shall not in any manner be deemed to limit or qualify the liability or obligations assumed by Subcontractor. Nor will Company's failure to identify any deficiencies in the certificate or other documents provided waive the obligations stated herein. If Subcontractor maintains a plan(s) of self-insurance to insure any part of the risks otherwise covered by the insurance required herein, Subcontractor shall be liable to and hold Company harmless from any claims, demands, losses, costs and expenses, to the same extent that the required insurance would have protected Company; and in any claim or suit it will be presumed that such insurance, if it had been procured and maintained, would have covered the occurrence, loss or damage in question. Notwithstanding the foregoing, Subcontractor shall not be permitted (without the advance written consent of Company) to satisfy any of its obligations in this section by utilizing any self-insurance.

(8) Subcontractor shall be responsible for ensuring that its Subcontractors and their Subcontractors carry insurance that Subcontractor deems appropriate to their participation in the Services. In the event that Sub-Subcontractor(s) fails to procure and maintain insurance as required herein, Subcontractor shall be liable to and hold Company harmless from any claims, demands, losses, costs and expenses to the same extent that the required insurance would have protected Company.

(9) Optional Insurance Coverage. Company reserves the option to reasonably amend the required insurance and this Exhibit H, as the scope of services is expanded and revised, to include any one or more of the following, subject to mutual agreement by the Parties:

(10) Business auto insurance, including as required pursuant to The Motor Carrier Act of 1980. If the Services involve transportation of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Subcontractor shall provide pollution auto coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached. Any statutorily required “No-Fault” benefits and uninsured/underinsured motorists’ coverage should be included.

(11) Umbrella/Excess Liability Insurance on an occurrence basis more than the underlying insurance identified in in this Exhibit H, and which is at least as broad as each and every one of the underlying policies. The amounts of insurance required in this Exhibit H may be satisfied by Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in this Exhibit H for the applicable types when added to the applicable limits for this paragraph 6.2.

11.1 The umbrella/excess liability insurance limits shall have limits of the following amounts:

(a) \$5,000,000 Any one occurrence and annually reinstating General Aggregate (b) \$5,000,000

Any one occurrence and Aggregate Products/Completed Operations, which shall be maintained for twelve (12) years following completion of the Services; and

(12) To the extent that any of Subcontractor’s performance under this Agreement includes delivery of any physical product or equipment to the Natrium Demonstration Reactor Site, Subcontractor shall be responsible for obtaining marine cargo insurance, including inland marine for the replacement cost value of such items. Marine cargo insurance will not have any exclusions for terrorism or (except with respect to inland marine) war. Company and any Specified Owner, if applicable, will be added as loss payees.

12.1 If any aircraft is to be used in the performance of the Services, Aircraft Liability insurance (including owned and non-owned) with the following limits:

12.2 Bodily Injury: \$10,000,000 each occurrence-\$2,000,000 each person

12.3 Property Damage: - \$10,000,000 each occurrence.

### **(13) FORCE MAJEURE EVENTS**

13.1 The Parties acknowledge and agree that the rights of the Company in respect of excusable events The Force Majeure events noted below and its control as to the applicability of any relief between the Parties in respect of any Force Majeure Event pursuant to this Agreement. In furtherance of the foregoing, and notwithstanding anything to the contrary in this Section, neither Party shall be entitled to excuse or relief in respect of a Force Majeure Event arising out of or in connection with any facts, events or circumstances, except to the extent Prime is entitled to relief in respect of such facts,

13.2 Except in the case of defaults of subcontractors (of any tier) of Subcontractor, neither Party will be deemed to be in default of any provision of this Agreement for a prevention of or delay in performance to the extent such prevention or delay arises from a cause beyond its control and without its fault or negligence (such occurrence, a “Force Majeure Event”). Examples of Force Majeure Events are: (1) acts of God or of the public enemy, (2) acts of the U.S. Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics or pandemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the affected Party. For purposes of this Section, “default” includes failure to make progress in the work so as to endanger performance. If Subcontractor’s failure to perform is caused by the failure of a sub- subcontractor of any tier to perform or make progress, and if the cause of the failure was beyond the control of both Subcontractor and the sub-subcontractor, and without the fault or negligence of either, Subcontractor shall not be deemed to be in default, unless the subcontracted supplies or services were obtainable from other sources at reasonable price and terms, Company directed Subcontractor in writing to purchase these supplies or services from the other source, Company agreed to compensate Subcontractor for any additional costs, and Subcontractor failed to comply reasonably with Company’s direction.

13.3 Any Party claiming relief in connection with a Force Majeure Event (the “Claiming Party”) shall notify the other Party as soon as practicable under the circumstances, and in detail, of the commencement and nature of such Force Majeure Event and the probable consequences thereof, including the obligations or performance which are prevented or delayed by reason thereof. The burden of proof regarding the existence of a Force Majeure Event shall rest with the Claiming Party. Any obligations suspended during the pendency of a Force Majeure Event shall be suspended only to the extent and for the duration of such Force Majeure Event.

13.4 From and after the occurrence of a Force Majeure Event, the Claiming Party shall use its commercially reasonable efforts to minimize disruption and delay, render performance in a timely manner and otherwise remedy the cause of such Force Majeure Event in the shortest

practicable time. If any failure to perform results from a Force Majeure Event (subject to the Claiming Party's compliance with this Section), the Claiming Party's time for performance shall be revised to.

**(14) ANTICIPATED CHANGE IN LAW**

Subcontractor shall reasonably promptly notify the Company of any reasonably identifiable anticipated change in any Applicable Law that the Subcontractor reasonably expects will affect the Services, the Project or the performance of any other obligations hereunder, and the Parties together shall determine the appropriate course of action, if any, to implement with respect to the potentially affected Services, Project or performance in light of the anticipated change in an effort to mitigate cost increases or schedule delays. Any such mitigation plan shall become effective when set forth in a Modification.

**EXHIBIT A**  
**GENERAL TERMS AND CONDITIONS**  
**(2 CFR 200)**

1. **Equal Employment Opportunity.** Subcontractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. Subcontractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. **Contract Work Hours and Safety Standards.** Subcontractor agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this agreement indicates any employment of mechanics or laborers.
3. **Rights to Invention Made Under Contract or Agreement.** Subcontractor agrees to comply with all applicable provisions of 37 CFR Part 401.
4. **Debarment/Suspension.** Subcontractors are prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Subcontractor and its subcontractors shall comply with the special provision “Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions”.
5. **Restrictions on Lobbying.** Subcontractor of these funds is prohibited from using monies for lobbying purposes; Subcontractor shall comply with the special provision “Restrictions on Lobbying”. Subcontractor shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by subcontractors and included in subcontractor contracts, as applicable.
6. **Anti-Israeli Boycott.** By accepting this work order, Subcontractor hereby certifies the following: 1. Subcontractor’s Company does not boycott Israel; and 2. Subcontractor’s Company will not boycott Israel during the term of the

contract. The following definitions apply to this statute: (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**(2 CFR 200 Procurement Clauses Incorporated by Reference - See below)**

7. 2 CFR 200.318(A), DOCUMENTED PROCUREMENT PROCEDURES
8. 2 CFR 200.318(B) MANAGEMENT OF SUBCONTRACTS
9. 2 CFR 200.318(C) CONFLICTS OF INTEREST
10. 2 CFR 200.319, COMPETITION
11. 2 CFR 200.318(H) AWARD SUBCONTRACTS TO RESPONSIBLE CONTRACTORS
12. 2 CFR 200.318(I), MAINTAIN ADEQUATE PURCHASING FILE DOCUMENTATION
13. 2 CFR 200.320(B)(2) (II) PERFORM TECHNICAL ANALYSES
14. 2 CFR 200.324, PERFORM COST AND PRICE ANALYSES
15. 2 CFR 200.320(C), SOLE SOURCE/NONCOMPETITIVE PROCUREMENT
16. 2 CFR 200.318(J) AND 2 CFR 200.324(C), SELECTION OF SUBCONTRACT TYPE

## **EXHIBIT B**

### **CONSTRUCTION TERMS AND CONDITIONS**

**The following federal requirements are incorporated by reference:**

1. **Davis Bacon and Related Acts.** Subcontractor agrees to comply with 2 CFR Part 200 Appendix II, especially section (D).
2. **Contract Work Hours and Safety Standards.** Subcontractor agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this agreement indicates any employment of mechanics or laborers.
3. **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** Subcontractor agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
4. **Procurement of Recovered Materials.** Subcontractor agrees to comply with all applicable provisions of 2 CFR §200.322.
5. **Domestic Preference.** As appropriate and to the extent consistent with law, the Subcontractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Consistent with §200.322, the following items shall be defined as: “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **SUPPLEMENTARY CONSTRUCTION CLAUSES**

#### **(6) Duty to Cooperate in Claims Investigation**

6.1 Subcontractor will fully cooperate with the Company in any investigation of any Claims or potential Claims made against any Indemnified Persons of the Parties. Upon becoming aware of any such investigation, the Company first receiving notice of the investigation will provide prompt notice

to the Subcontractor, and the Subcontractor will cooperate with each other with regard to the investigation. Such cooperation will include (without limitation) making employees available for interviews and depositions, providing requested documentation and otherwise being responsive to requests for information concerning the Claim or potential Claim. This obligation to cooperate will survive the completion, expiration, cancellation or termination of this Agreement. This obligation will exist regardless of whether any indemnification obligations have been or will be triggered by the circumstances on which the Claim is based and regardless of whether either Party is named as a party in any lawsuit, arbitration or other action that arises out of the Claim.

6.2 Subcontractor will not make or authorize any direct or indirect contribution whatsoever to any federal, state, or local political candidate, public official, office holder, political party, committee or agency thereof on behalf of the Company. Subcontractor will further make no direct or indirect contribution of any kind or nature to any person who may be considered a candidate for a state public service commission office, or to any member of the state public service commission, or to any state public service commission employee, on behalf of any officer or employee of the Company. Subcontractor hereby represents and warrants as follows at all times during the Term: (a) neither it, nor any of its beneficial owners, is a Specially Designated National (SDN) as defined by U.S. Department of the Treasury Office of Foreign Asset Control (“OFAC”); (b) neither it nor its personnel (including its contractors, officers, directors and principal owners) are currently included in any published lists maintained by the U.S. government of persons and entities whose export or import privileges have been denied or restricted; (c) neither it, nor any of its beneficial owners, is a citizen of a country subject to an OFAC Country Sanction; and (d) it, and all of its beneficial owners, are in material compliance with any and all laws and regulations relating to the prevention of money laundering and the financing of terrorism to which they are expressly subject. Subcontractor agrees that it will not intentionally offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, in connection with this Agreement and the transactions contemplated hereby to a Foreign Public Official, for that Official or for a third party, in order that the Official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage for work related to this Agreement. Subcontractor warrants and represents that, before the execution of this Agreement, neither it nor its Affiliates took any action with respect to any work related to this Agreement that would have violated this Section had this Agreement been signed at that time. As used herein, the term “Foreign Public Official” and “Official” will mean any person holding a legislative, administrative or judicial office of a country, whether appointed or elected; any person exercising a public function for a country, including a public agency or a public enterprise; any official or agent of a public international organization; any political party, official of a political party or candidate for political office. As used in this this Section, the term “country” will include all levels and subdivisions of a government from national to local.

### (6.3) Drawings and Specifications

All drawings and specifications provided by the company to the subcontractor shall comply with Applicable Laws. If either Party discovers any discrepancy or conflict between such drawings and specifications and any Applicable Laws, said Party shall report the problem in writing to the other Party's applicable contract administrator. If applicable, it will be outlined in your statement of work or purchase order.

### (6.4) Site Access Provisions and Behavioral Standards

6.4.1 Subcontractor or any of its Representatives access any property, premises, facility, system or network of the Company or TerraPower in their performance under this Agreement that Subcontractor shall comply, and ensure that all its Representatives comply, with all access, safety, security, traffic, delivery, behavioral, drug/alcohol/background and acceptable use rules, policies, procedures, requirements, standards, signage, and protocols applicable to such property, premises, facility, system or network. If applicable, any property, premises, facility, system or network will be described in your statement of work or purchase order to the subcontractor.

6.4.2 Representatives of Subcontractor and Company shall conduct their activities pursuant to this Agreement and the Services in accordance with applicable ethical standards. Representatives must not, at any time, exhibit the following behaviors: (A) harassment or discrimination of any kind or character, including but not limited to conduct or language derogatory to any individual on the basis of race, gender, color, religion, age, national origin, disability, veteran status or sexual orientation that creates an intimidating, hostile, or offensive working environment (specific examples include, but are not limited to, jokes, pranks, epithets, written or graphic material, or hostility or aversion toward any individual or group); (B) any conduct or acts such as threats or violence that creates a hostile, abusive, or intimidating work environment (examples of such inappropriate behaviors include, but are not limited to fighting, abusive language, inappropriate signage, use or possession of firearms on the work site or the threat of any of the foregoing); (C) use of Company's computers, email, telephone or voice-mail system that in any way involves material that is obscene, pornographic, sexually oriented, threatening, or otherwise derogatory or offensive to any individual on the basis of race, gender, color, religion, age, national origin, disability, veteran status, gender identity, or sexual orientation; (D) the use of, being under the influence of, or possession of alcoholic beverages or unlawful drugs on the work site; or (E) engagement in any activity that creates a conflict of interest or appearance of the same, or that jeopardizes the integrity of Company or Subcontractor.

6.4.3 If any Company or Subcontractor Representative observes a Representative of either Party doing, or is ever asked to do, something that the Representative considers to be unethical, illegal, or in

violation of these behavioral standards, the Representative should be instructed to notify management immediately,

6.4.4 Safety Conscious Work Environment and Employee Concerns. Subcontractor shall comply with Section 211 of the Energy Reorganization Act and 10 CFR 50.7 “Employee Protection” which prohibit an NRC licensee, an applicant for an NRC license, or a contractor or subcontractor of an NRC licensee or applicant from discriminating against an employee for engaging in protected activities. Discrimination includes discharge, or other adverse action that relates to compensation, terms, conditions, and privileges of employment, and protected activities include raising nuclear safety or quality issues internally to company or Subcontractor management or directly to the NRC.

6.4.5 Subcontractor shall maintain a working environment in which Subcontractor’s employees are free to raise nuclear safety issues to Company without fear of retaliation. Subcontractor shall inform its company that are engaged to work under this Agreement, of their protected rights under Section 211 of the Energy Reorganization Act and 10 CFR 50.7 to report nuclear safety or quality concerns.

6.4.6 Subcontractor shall notify Company within five (5) Business Days after receipt by Subcontractor of:

6.4.7 An allegation with work under this Agreement by an employee or former employee of Subcontractor of discrimination because of engagement in protected activities; or

6.4.8 Notice of filing of a Section 211 complaint with the U.S. Department of Labor by any such employee or former employee; or

6.4.9 Notice of an investigation related to the filing of an allegation or Section 211 complaint by the NRC or Occupational Safety and Health Administration (OSHA).

6.4.10 Subcontractor shall cooperate fully with Company to assure a complete investigation of any allegation or complaint of discrimination for engaging in protected activity; shall provide Company with any investigation summary that it may prepare or which may be prepared by the NRC or OSHA as a result of any such allegation or complaint; and shall provide Company with a full written description of any Subcontractor management action which may have been taken in response to any such allegation or complaint.

6.4.11 Any breach of this provision shall be a material breach of contract. In the event the NRC imposes a civil penalty against Company as a result of Subcontractor’s or its sub-subcontractor’s or sub-Company’s breach of this provision, such civil penalty shall be considered by the Parties to be direct and not special consequential damages under the contract.

(7) Site Access Provisions and Behavioral Standards

7.1 Subcontractor or any of its Representatives access any property, premises, facility, system or network of the Company or TerraPower in their performance under this Agreement that Subcontractor shall comply, and ensure that all its Representatives comply, with all access, safety, security, traffic, delivery, behavioral, drug/alcohol/background and acceptable use rules, policies, procedures, requirements, standards, signage, and protocols applicable to such property, premises, facility, system or network. If applicable, any property, premises, facility, system or network will be described in your statement of work or purchase order to the subcontractor.

7.2 Representatives of Subcontractor shall conduct their activities pursuant to this Agreement and the Services in accordance with applicable ethical standards. Representatives must not, at any time, exhibit the following behaviors: (A) harassment or discrimination of any kind or character, including but not limited to conduct or language derogatory to any individual on the basis of race, gender, color, religion, age, national origin, disability, veteran status or sexual orientation that creates an intimidating, hostile, or offensive working environment (specific examples include, but are not limited to, jokes, pranks, epithets, written or graphic material, or hostility or aversion toward any individual or group); (B) any conduct or acts such as threats or violence that creates a hostile, abusive, or intimidating work environment (examples of such inappropriate behaviors include, but are not limited to fighting, abusive language, inappropriate signage, use or possession of firearms on the work site or the threat of any of the foregoing); (C) use of Company's computers, email, telephone or voice-mail system that in any way involves material that is obscene, pornographic, sexually oriented, threatening, or otherwise derogatory or offensive to any individual on the basis of race, gender, color, religion, age, national origin, disability, veteran status, gender identity, or sexual orientation; (D) the use of, being under the influence of, or possession of alcoholic beverages or unlawful drugs on the work site; or (E) engagement in any activity that creates a conflict of interest or appearance of the same, or that jeopardizes the integrity of Company or Subcontractor.

7.3 If any Company or Subcontractor Representative observes a Representative of either Party doing, or is ever asked to do, something that the Representative considers to be unethical, illegal, or in violation of these behavioral standards, the Representative should be instructed to notify management immediately,

7.4 Safety Conscious Work Environment and Employee Concerns. Subcontractor shall comply with Section 211 of the Energy Reorganization Act and 10 CFR 50.7 "Employee Protection" which prohibit an NRC licensee, an applicant for an NRC license, or a contractor or subcontractor of an NRC licensee or applicant from discriminating against an employee for engaging in protected activities. Discrimination includes discharge, or other adverse action that relates to compensation, terms, conditions, and privileges of employment, and protected activities include raising nuclear safety or quality issues internally to company or Subcontractor management or directly to the NRC.

7.4.1 Subcontractor shall maintain a working environment in which Subcontractor's employees are free to raise nuclear safety issues to Subcontractor, to Company, Specified Owner, or to government agencies without fear of retaliation. Subcontractor shall inform its employees, subcontractors and company that are engaged to work under this Agreement, of their protected rights under Section 211 of the Energy Reorganization Act and 10 CFR 50.7 to report nuclear safety or quality concerns.

7.4.2 Subcontractor shall notify Company within five (5) Business Days after receipt by Subcontractor of:

7.4.2.1 An allegation with work under this Agreement by an employee or former employee of Subcontractor or any Sub-Subcontractor or Sub-Company of discrimination because of engagement in protected activities; or

7.4.2.2 Notice of filing of a Section 211 complaint with the U.S. Department of Labor by any such employee or former employee; or

7.4.2.3 Notice of an investigation related to the filing of an allegation or Section 211 complaint by the NRC or Occupational Safety and Health Administration (OSHA).

7.4.3 Subcontractor shall cooperate fully with Company to assure a complete investigation of any allegation or complaint of discrimination for engaging in protected activity; shall provide Company with any investigation summary that it may prepare or which may be prepared by the NRC or OSHA as a result of any such allegation or complaint; and shall provide Company with a full written description of any Subcontractor management action which may have been taken in response to any such allegation or complaint.

7.4.4 Any breach of this provision shall be a material breach of contract. In the event the NRC imposes a civil penalty against Company as a result of Subcontractor's or its sub-subcontractor's or sub-Company's breach of this provision, such civil penalty shall be considered by the Parties to be direct and not special consequential damages under the contract.

## **(8) PERFORMANCE AND PAYMENT BONDS- CONSTRUCTION OF THE ADVANCED DEMONSTRATION REACTOR**

For the purposes of this section, Subcontractor's responsibility is for performance and payment bonds related to construction of the fuel fabrication facility. Prior to commencement of construction of the advanced reactor, bonding requirements must be met by the Company. To do this, the Company may provide DOE with its proposed bonding policy and requirements; these should be submitted to DOE concurrent with the Company's continuation award budget(s) which include construction work, but in any event must be provided to the Contracting Officer for review/approval at least 120 days prior to the planned beginning of construction. DOE may accept the bonding policy and requirements of the

Company provided that the Contracting Officer makes a determination that the Federal interest is adequately protected. The bonds required must at least cover the Government portion of the construction cost, but may cover 100 percent of the construction cost, as an allowable cost under this award. At a minimum, requirements must be as follows: A performance bond on the part of the Company for 100 percent of the construction cost. A “performance bond” is one executed in connection with a contract for the construction to secure fulfillment of all the Company’s/subcontractor's obligations under such contract/subcontract. A payment bond on the part of the Company/subcontractor for 100 percent of the Government share construction contract cost. A “payment bond” is one executed in connection with the construction contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **(9) PROJECT MANAGEMENT PLAN**

As required by the Contractor, the Project Management Plan (PMP) submitted and approved in the application shall be maintained and implemented by the recipient throughout the project period of performance. Regular updates to the PMP shall be made by the recipient, as necessary, during project performance. All updates shall be submitted to the Contractor for review and approval. Within 30 days following the post award conference as a first task, the recipient will revise the version of the PMP that was submitted with its application by including details from the negotiation process. The PMP, is updated by the recipient as the project progresses to reflect update to the approved cost and schedule baselines. The Recipient prepares periodic reports which include schedule and budget variances. The PMP contains the project cost and schedule baseline and is used as a basis to report budget and schedule variances.

Post award, in conjunction with a PMP, the Contractor will jointly develop quality assurance requirements and plans with the Recipient to monitor performance to ensure standards are met. The PMP will not specify how the award recipient will do the work but rather describe the work in terms of outcomes or results. The PMP will provide flexibility to account for variations and changes in requirements as the project progresses

#### **(10) COORDINATION AND MANAGEMENT PLAN**

If the recipient uses multiple project managers (PMs), the recipient must provide for Contractor approval a “Coordination and Management Plan” that describes the organization structure of the project as it pertains

to the designation of multiple PMs. This plan must be updated by the recipient throughout the project period, as necessary (with a copy of any update provided to DOE). The plan must include (at a minimum):

- Process for making decisions on scientific/technical direction
- Publications
- Intellectual property issues
- Communication plans
- Procedures for resolving conflicts
- PMs' roles and administrative, technical, and scientific responsibilities for the project.

#### **(11) RETAINAGE**

Subcontractor shall include in any major construction contract a retainage mechanism with respect to payment of the contract price and other amounts thereunder. Such mechanism shall be approved in writing by company (such approval not to be unreasonably withheld) and shall include (x) customary retainage terms and conditions and (y) a retainage amount that is not less than five percent (5%) of such major construction contract's aggregate contract price. Under no circumstances shall any amounts in respect of such retainage be invoiced pursuant to this agreement, or become due from company, before such amounts are distributed from retainage when due pursuant to such major construction contract.

#### **(12) HOLD POINT/S**

Any portion of the construction may be subject to certain mandatory hold or notification points (each, a "hold point"), which may require witnessing by an authorized representative of company. Any hold points applicable to the construction shall be set forth in the applicable statement of work or otherwise agreed between the parties in writing. Applicable construction may not proceed beyond a hold point without either (a) inspection or review by an authorized representative of company, or (b) company's express written authorization for the applicable construction to proceed. Subcontractor shall provide company at least fourteen (14) business days advance written notice of each hold point to allow the parties to schedule the construction related to the applicable hold point. Hold points may or may not be designated as critical points in the statement of work (sow).

#### **(13) INSPECTION**

Subcontractor acknowledges and agrees that company, DOE, Terrapower or any other applicable governmental entity may from time to time perform inspections and tests with respect to the ownership and the equipment and any other services. Subcontractor agrees to cooperate, and to cause its subcontractors and sub-subcontractors to cooperate with company, doe, Terrapower or such other governmental entity, as applicable, with respect to such inspections and tests, including by providing

reasonable access to its facilities, office space and resources and assistance for the safety and convenience of doe and any other applicable representatives in the performance of their duties. Company reserves the right, but shall not be obligated, to inspect (by any of its representatives) the performance by subcontractor of the services here under to: (a) follow the progress of the services; or (b) suspend services not in accordance with your purchase order or statement of work. Such inspection by company's representatives will not be deemed to be supervision by company, its agents, servants, employees or subcontractors, but will be only for the purpose of ensuring that the services comply with the terms and conditions. Company may report to subcontractor any unsafe or improper conditions or practices observed at any site at which services occur for corrective or enforcement action by subcontractor. Subcontractor must provide sufficient safe and proper facilities at all times for the inspection of the services. The applicable company representatives who have received reasonable required training to enter subcontractor's site shall have free access to the services and to subcontractor's premises engaged in the services at reasonable times and mutually agreed schedule in compliance with subcontractor's internal policies, security measures and applicable requirements (in each case, to the extent made reasonably available to company) relating to site access and access to confidential information of subcontractor; provided, that any such access measures are no more stringent than standard industry practice. Subcontractor will afford such company representatives, without charge, such reasonable facilities on subcontractor's premises as are appropriate for such company representatives to conveniently observe and inspect the services in progress and will allow such company representatives to have such other conveniences as would normally company such inspection.

#### **(14) HISTORIC PRESERVATION**

The requirements of this part are applicable to any site selected (including a DOE-owned site, such as a Hanford location) and shall be coordinated in conjunction with the appropriate Federal Agency, State historic Preservation Officer (SHPO) and Tribal representatives. Prior to the expenditure of Federal funds to alter any structure or site, including any groundbreaking for any purpose, the Recipient will cooperate with the appropriate Federal Agency to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA). Section 106 requires federal agencies to consider the effects of federally funded projects on historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient, in conjunction with the NRC, must contact the State Historic Preservation Officer (SHPO), and appropriate Tribal representatives, to coordinate the Section 106 review outlined in 36 CFR § 800. SHPO contact information is available at the following link: <https://ncshpo.org/directory/>. Cultural Resource Working Group contact information is available through the DOE Hanford Cultural Resources Program. Recipients should be aware that compliance with Section 106 of the NHPA generally requires consultation with Tribes, SHPO, the public, DOE and other interested parties. DOE's strong preference

(and in accordance with section 106) is a consensus agreement (Memorandum of Agreement or Programmatic Agreement) addressing mitigation, assuming an adverse effect finding. DOE's Cultural Resources Program operates under the Hanford Cultural Resource Program Management Plan. That plan describes the cultural resources review documentation that must be provided to Tribes, SHPO, the public, the NRC, and the DOE Cultural Resources Program for review. The documentation must meet the data standards of the Cultural Resources Management Plan. The Section 106 process must be completed prior to DOE signing the lease, and prior to the Recipient performing any groundbreaking activities.

### **(15) PREPARATION OF COST ESTIMATE**

Subcontractor shall support Company's development of any construction cost estimate to be submitted to DOE by Company as contemplated in paragraph 71 of Exhibit D (and, in furtherance thereof, Subcontractor shall prepare in good faith aggregate cost estimates for the Subcontractor construction (including supporting information and other materials), utilizing the cost estimate classification system promulgated by the Association for the Advancement of Cost Engineering pursuant to the then current Integrated Master Control Schedule, and shall provide such estimates to Company);

- a. As agreed, to by the parties during performance, the subcontractor must submit a detailed cost estimate for the construction portion; the cost estimate must be submitted on the forms agreed to by the parties or on copies of those forms. The subcontractor will be required to certify that to the best of its knowledge and belief, except as explicitly noted otherwise therein, the cost estimate data are accurate, complete, and as current as practicable when submitting the cost estimate, and to re-certify this as of the date of agreement on the cost estimate by the parties, or if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on the cost estimate.
- b. The cost estimate form may require the recipient to categorize the various categories, including:
  - 1) Costs provided by subcontractors on a lump sum basis.
  - 2) Costs provided by subcontractors on target price basis.
  - 3) Costs provided by subcontractors on a cost reimbursable basis.
  - 4) Costs provided by subcontractors on a time and material basis.
  - 5) Costs provided by subcontractors on firm/ fixed price per Unit of construction (e.g., yard of safety related concrete); or
  - 6) Any combination of paragraphs (b)(1) through (b)(5) of this term.

c. If the recipient does not submit the construction cost estimate on all required items, failure to do so may result in the award being terminated without further consideration.

#### **(16) ORGANIZATION AND DIRECTION OF THE CONSTRUCTION WORK**

When the construction portion of this award is executed, the Subcontractor shall submit to the GNF a chart showing the project organization, with key personnel to be employed in connection with the work under this award, and their respective duties. The Recipient shall keep the data furnished current by supplementing it as additional information becomes available.

Work performance under this award shall be under the full-time resident direction of (1) the Recipient, if the Recipient is an individual; (2) one or more principal partners, if the Recipient is a partnership; or (3) one or more senior officers, if Recipient is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Recipient may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

#### **(17) GOVERNMENT ACCESS TO CONSTRUCTION PROJECT INFORMATION**

The Company shall have access to subcontractor construction project information. This access shall be limited to the minimum necessary as determined by the Company to verify the subcontractor is successfully and efficiently performing the construction portion of the project. The Company will make reasonable efforts to ensure this access does not interfere with or unduly delay project work. Access includes but is not limited to the following:

- o Drawings and specifications
- o Construction and Execution plans o Resource loaded schedules
- o Design functions and requirements for the site final design review of Risk management plans
- o Value management and engineering studies and/or plans o Acquisition strategies
- o Project execution plans
- o Project controls including earned value management systems
- o Qualifications of the integrated project team
- o Financial/cost share strategy for funding the construction project.

Each Party agrees to cooperate fully with any investigation or audit by or before any Governmental Entity, and Subcontractor agrees to cooperate fully, upon request made in writing by Company, and their representatives in connection with any investigation or audit by or before any Governmental Entity and

related to the Project or the Cooperative Agreement. Subcontractor shall make available personnel to respond to questions arising from said audits by the relevant Governmental Entity, or their representatives. Without limiting the foregoing, Subcontractor shall support Company in providing to TerraPower the full extent of TerraPower's access rights and remedies set forth in paragraph 78, which Subcontractor acknowledges to be applicable to Subcontractors' information.

#### **(18) WORK OVERSIGHT IN ENGINEERING, PROCUREMENT, CONSTRUCTION CONTRACT AWARDS**

The extent and character of the work to be done by the subcontractor shall be subject to these terms and conditions, and the general oversight direction, and approval of the Company, and as necessary, TerraPower.

#### **(19) ARCHITECTURAL BARRIERS ACT OF 1968**

The subcontractor must ensure that all persons have ready access to, and use, of buildings regardless of disability in the design, construction or alteration of buildings and facilities financed with Federal funds to the extent required under this law and consistent with existing applicable statutes and regulations.

#### **(20) EQUAL EMPLOYMENT OPPORTUNITY UNDER E.O. 11246**

As amended, requires the Company and Subcontractors performing federally assisted construction projects to provide equal opportunity, without regard to race, color, religion, sex or national origin, to persons employed or seeking employment with them.

#### **(21) PERFORMANCE AND PAYMENT BONDS- CONSTRUCTION OF THE ADVANCED DEMONSTRATION REACTOR**

For the purposes of this section, Subcontractor's responsibility is for performance and payment bonds related to construction of the fuel fabrication facility. Prior to commencement of construction of the advanced reactor, bonding requirements must be met by the Company. To do this, the Company may provide DOE with its proposed bonding policy and requirements; these should be submitted to DOE concurrent with the Company's continuation award budget(s) which include construction work, but in any event must be provided to the Contracting Officer for review/approval at least 120 days prior to the planned beginning of construction. DOE may accept the bonding policy and requirements of the Company provided that the Contracting Officer makes a determination that the Federal interest is adequately protected. The bonds required must at least cover the Government portion of the construction cost, but may cover 100 percent of the construction cost, as an allowable cost under this award. At a minimum, requirements must be as follows: A performance bond on the part of the Company for 100 percent of the construction cost. A "performance bond" is one executed in connection with a contract for the construction to secure fulfillment of all the Company's/subcontractor's obligations under such

contract/subcontract. A payment bond on the part of the Company/subcontractor for 100 percent of the Government share construction contract cost. A “payment bond” is one executed in connection with the construction contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## **(22) CONSTRUCTION PERFORMANCE REPORTS**

For the most part, onsite technical inspections and certified percentage of completion data will be relied on heavily by Company and/or DOE to monitor progress under the award for construction. However, DOE and/or Company may require additional performance reports when considered necessary and as directed by the Company.

## **(23) MATERIAL AND WORKMANSHIP FOR THE CONSTRUCTION**

All equipment, material, and articles incorporated into the work covered by this award shall comply with applicable quality assurance and safety-related regulations, and (upon issuance) the License for the advanced demonstration reactor.

If work is performed at a Federal location, the Company may require, in writing, that the subcontractor remove from the work any employee the Company deems incompetent, careless, or otherwise objectionable.

## **(24) PERMITS AND RESPONSIBILITIES – CONSTRUCTION OF THE ADVANCED DEMONSTRATION REACTOR**

For the construction portion of this award, the Recipient shall be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. Expenses associated with such permits and licenses shall be deemed allowable costs that are eligible for DOE cost share.

The Recipient shall be responsible for all damages to persons or property that occur as a result of the Recipient’s fault or negligence. The Recipient shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the award.

## **(25) CONTINGENCY FOR CONSTRUCTION OF THE ADVANCED DEMONSTRATION REACTOR**

a. Contingency is that part of a budget estimate of future construction costs associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the project.

Amounts for major project scope changes, unforeseen risks, or extraordinary events are excluded from contingency estimates.

b. It is permissible for contingency amounts, other than those excluded in paragraph (a) of this clause, to be explicitly included in budget estimates for the construction portion of this award, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly accepted cost estimating methodologies, specified in the budget documentation of the award, and accepted by DOE. As such, any contingency amounts are to be included in the award. In order for actual costs incurred to be allowable, they must comply with the cost principles, other requirements in this award, and national policy requirements; be necessary and reasonable for proper and efficient accomplishment of project; and be verifiable from the recipient's records.

c. Payments made by DOE to the recipient's "contingency reserve" or any similar payment, made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in § 200.431 Compensation—fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs, and § 200.447 Insurance and indemnification.

## **EXHIBIT C**

### **SPECIAL TERMS AND CONDITIONS**

1. INTELLECTUAL PROPERTY PROVISIONS (CDLB-115) COOPERATIVE AGREEMENT – SPECIAL DATA STATUTE RESEARCH, DEVELOPMENT, OR DEMONSTRATION LARGE BUSINESS AND FOREIGN ENTITY (ALL CLAUSES INCORPORATED BY REFERENCE)
2. FAR 52.227-1 - AUTHORIZATION AND CONSENT (DEC 2007) ALTERNATE (APR1984)
3. FAR 52.227-2 - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
4. 2 CFR 910 -RIGHT IN DATA – PROGRAM COVERED UNDER SPECIAL DATA STATUES APPENDIX A OF SUBPART D
5. PATENT RIGHTS – WAIVER (10 CFR 784) - DOE PATENT WAIVER REGULATIONS (7/9/2020)
6. FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007) ALTERNATE I (APR 1984)
7. FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

**NOTE:** IN READING THESE PROVISIONS, ANY REFERENCE TO “CONTRACTOR” SHALL MEAN “RECIPIENT,” AND ANY REFERENCE TO “CONTRACT” OR “SUBCONTRACT” SHALL MEAN “AWARD” OR “SUBAWARD.”

**EXHIBT D**

**DOE COOPERATIVE AGREEMENT FLOWDOWN PROVISIONS**

<b>DEAR NUMBER</b>	<b>CLAUSE TITLE</b>
DEAR 952-204-71	SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011)
DEAR 952.208-70	PRINTING (APR 1984)
DEAR 970.5225-1	COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)
DEAR 970.5226-2	WORKFORCE RESTRUCTURING (DEC 2000)
DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)
DEAR 970.5227-7	ROYALTY INFORMATION (DEC 2000)
DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)
DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)
DEAR 970.5232-5	LIABILITY (DEC 2000)
DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)
DEAR 970.5226-2	WORKFORCE RESTRUCTURING (DEC 2000)
DEAR 970.5227-7	ROYALTY INFORMATION (DEC 2000)
DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)
DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)

**(1) ADMINISTRATIVE REQUIREMENTS (DECEMBER 2014)**

The administrative requirements for DOE grants and cooperative agreements are contained in 2 CFR Part 200 as amended by 2 CFR Part 910 [DOE Financial Assistance Regulation] (See: <http://www.eCFR.gov>). All references to 2 CFR 200, 2 CFR 910, FAR and DEAR clauses and articles incorporated by reference are, unless otherwise specified, to the version applicable as of the November 1, 2020.

**(2) NOTICE REGARDING ELIGIBLE/INELIGIBLE ACTIVITIES**

Eligible activities under this program include those which describe and promote the understanding of scientific and technical aspects of specific energy technologies, but not those which encourage or

support political activities, such as the collection and dissemination of information related to potential, planned, or pending legislation.

### **(3) RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be submitted to GNF for guidance from DOE.

### **(4) CONFERENCE SPENDING (FEBRUARY 2015)**

The recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

### **(5) STATEMENT OF FEDERAL STEWARDSHIP**

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies that develop during the project, consistent with U.S. Nuclear Regulatory Commission (NRC) regulatory, licensing, and permitting requirements for commercial nuclear reactors, insofar as the reactor will be licensed by the NRC; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

### **(6) SITE VISITS**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Recipient must provide, and must require Subcontractors to provide, reasonable access to facilities, office space,

resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

## **(7) PUBLICATIONS**

The Recipient is encouraged to publish or otherwise make publicly available the results of the work conducted under the award. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award

Number(s) [Enter the award number(s)]."

Disclaimer: "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."

## **(8) FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

The Subcontractor must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

Also, the Subcontractor shall comply with all federal, state, county, and municipal laws, ordinances, and regulations together with DOE directives and requirements applicable to the Work to be performed under this Contract. The Subcontractor shall secure all required licenses and permits prior to commencing the Work.

The Subcontractor shall indemnify and hold harmless the Government, the Company (GNF), and each of their respective officers, directors, and employees from and against all liability for third party claims, suits, damages, losses, costs, fines, civil penalties, remediation, corrective action or other response action costs, and any associated expense (including, without limitation, costs of defense; settlement; reasonable attorneys' fees; and costs incurred in enforcing this indemnification) caused

by any of the following attributable to the gross negligence, fraud or willful misconduct of the Subcontractor, its lower tier subcontractors, or their respective employees

## **(9) INTELLECTUAL PROPERTY PROVISIONS**

To the extent applicable, Subcontractor shall comply with the following:

Special Intellectual Property Provisions will apply to Agreements awarded. These include special data protection provisions and the issuance of a class patent waiver to enhance commercialization of technology developed under this program. Additionally, specific intellectual property provisions can be found in Article 41 and will be amended as directed under any class patent waiver.

Special Protected Data Statutes. This program is covered by a special protected data statute. The provisions of the statute provide for the protection from public disclosure, for a period of up to five (5) years, 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. If the maximum statutory period for protection from the public disclosure is extended during the period of performance of the award, DOE will modify the award to extend the period of protection from public disclosure to the maximum allowable time period provided by statute with retroactive effect to the date of award to the extent allowable by applicable law. Generally, the provision entitled, Rights in Data — Programs Covered Under Special Protected Data Statutes, (2 CFR 910 Appendix A to Subpart D —Patent and Data Provisions), would apply, but may be modified to accommodate NE program requirements and which have been agreed to between recipient1 and DOE in Exhibit B1. 2 Otherwise, the government has unlimited rights in technical data created under the DOE agreement. Delivery or third- party licensing of proprietary software or data developed solely at private expense will not normally be required except as specifically negotiated in an agreement or patent waiver to satisfy DOE’s needs or to ensure the commercialization of technology developed under the DOE agreement.

Class Patent Waiver: The Office Nuclear Energy (NE) Class Patent Waiver W(C) 2020-002 is applicable to this agreement/award. The class patent waiver will provide recipients, Subcontractors and subcontractors, not subject to the Bayh-Dole Act, the option to retain title to their own inventions, subject to the same government retained rights identified in the Act above. To retain the class waiver, a recipient, Subcontractor or subcontractor, as a whole or as a team, must maintain the required cost-share under the program and agree to substantially manufacture

technology created in the U.S., or provide other economic benefits to the U.S. in accordance with the U.S. competitiveness provision set forth in the above referenced class patent waiver.

If government funding is not available under the Award Agreement for the complete term and at the funding levels needed for completion, limiting the ability of the recipient to complete and operate the Advanced Reactor as contemplated by the Award Agreement, DOE agrees, upon recipient's request to DOE, to provide appropriate relief from the U.S. Competitiveness clause set forth in the Class Patent Waiver in order to enable recipient to complete and operate the Advanced Reactor outside of the United States.

Small Businesses and Nonprofits: Domestic small businesses and domestic nonprofit organizations will receive the patent rights clause at 37 CFR 401.14, i.e., the implementation of the Bayh-Dole Act. This clause permits domestic small business and domestic nonprofit organizations to retain title to subject inventions. Therefore, small businesses and nonprofit organizations do not need to request a waiver.

**(10) 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. The purchase of foreign equipment and materials must be approved by GNF prior to purchase.

**(11) ENVIRONMENTAL, SAFETY AND HEALTH (ES&H) PERFORMANCE OF WORK AT DOE FACILITIES (applies if performance occurs on a DOE-owned or control site)**

With respect to the performance of any portion of the work under this award which is performed at a DOE-owned or controlled site, the Subcontractor agrees to comply with all State and Federal ES&H regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-Owned or controlled site, Subcontractor recognizes that Company shall contact the site facility manager for information on DOE and site-specific ES&H requirements.

The Subcontractor shall apply this term to its Subcontractors and contractors.

**(12) N/A**

**(13) EQUIPMENT (DECEMBER 2014)**

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR § 200.313 before disposing of the property.

States must use equipment acquired under a Federal award by the state in accordance with state laws and procedures. Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by the Federal awarding agency in the priority order specified in 2 CFR § 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR §200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity.

Disposition will be made as follows: (a) items of equipment with a current fair market value of \$10,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency; (b) Non-Federal entity may retain title or sell the equipment after compensating the Federal awarding agency as described in 2 CFR §200.313(e)(2); or (c) transfer title to the Federal awarding agency or to an eligible third Party as specified in CFR § 200.313(e)(3).

See 2 CFR § 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR § 200.439 Equipment and other capital expenditures.

See 2 CFR § 910.360 for amended requirements for Equipment for For-profit recipients.

If there is a statutory change that allows DOE to vest unconditional title to property in the non-Federal entity, without reference to the above requirements, then DOE agrees to amend this Agreement to delete the foregoing language and substitute the word "RESERVED".

#### **(14) USE OF REAL PROPERTY AND EQUIPMENT ACQUIRED UNDER THE AWARD**

For real property and equipment acquired in the performance of this award, the real property and equipment can continue to be used for the originally authorized purpose as long as needed for that purpose (i.e., as part of the power generation facilities of an electric utility system or in any other manner for the purpose of demonstrating the suitability for commercial application of the advanced nuclear reactor). Accordingly, at the end of the award project period, DOE will proceed with its normal award close out procedures; however, the Subcontractor shall maintain conditional title to the property

and continue to use it for its originally authorized purpose. The Subcontractor cannot encumber this property, without prior written approval by Company, and must follow the requirements set forth in 2 C.F.R. § 910.360 before disposing of the property.

Recipient will be allowed to continue to use all equipment and property acquired in connection with this award for the original purposes of the award after the award term has ended. Title to this equipment and property will be held by the recipient conditionally with the US Government maintaining a reversionary interest commensurate with the federal participation in the original project. Recipient shall provide a report at least once every five (5) years following the award term period of performance to describe the continued use and to certify that it is in accordance with current regulations, licensing and the original purpose(s) of the award. This report shall also include updated current Fair Market Value (FMV) of the aggregate equipment and property, hereafter referred to as the complex. (see next paragraph) Within 90 days of initial award, recipient shall submit to the Contracting Officer (CO) a projected progressive FMV (in 2020 dollars) in 5 year increments lasting 75 years (or whatever the design time period for the operational life of the reactor is (e.g., value at construction completion, value at 5/10/15/20/25/.../75 years after construction) of the entire operational complex constructed for the award. The projected progressive FMV (in current year dollars) shall be updated and submitted to the CO within 90 days following completion of the complex construction. The projected FMV will serve as a basis for determining when the US Government will surrender all interest in the title of the complex acquired/constructed in connection with this award. Values should be projections of expected sales price if complex were to be advertised widely and sold to an open and competitive market. Do not use depreciated or book value. When the FMV of the complex is less than \$5,000, the US government will surrender/abandon claim to title for the complex acquired/constructed in connection with this award. FMV calculations should consider anticipated liabilities and costs associated with maintenance and end of life remediation.

Company will prepare the initial FMV for the SFR Fuel Facility in coordination with Subcontractor using the format that Company will use for the Sodium Demonstration Reactor and which will be submitted in September 2021 by Company to DOE in accordance with this paragraph 29 (it being understood that Company shall not be obligated to provide to Subcontractor the initial FMV, as submitted to DOE, unless DOE requires Company (or Subcontractor on its behalf) to update such FMV, in which case Company shall provide to Subcontractor such initial FMV in detail as reasonably necessary to satisfy such DOE requirement). Thereafter, if the current pending federal infrastructure bill with a cessation of U.S. government property interests is passed and a corresponding change is made to the DOE Cooperative Agreement, then it is anticipated that this paragraph will be removed and no such FMV reporting obligation will apply to Subcontractor. If the aforementioned infrastructure bill is not passed and/or DOE does not agree to make the corresponding change to the DOE Cooperative Agreement, then this paragraph shall remain in effect without such changes, and

Subcontractor will be subject to this paragraph for subsequent FMV submissions thereunder to Company, the first such submission from Subcontractor due within 90 days following completion of designated construction.

Recipients will remain liable for all maintenance, remediation, and end of life disposition activities associated with the complex throughout its entire lifecycle. If recipient desires to sell or transfer the complex to a different entity at any time prior to full title transfer, contact the CO for guidance. During the time the property continues to be used, the recipient must report to DOE on the continued use of the property, as specified in the award's Reporting Requirements Checklist and in accordance with 2 CFR § 200.330. Further, at the time recipient decides to no longer use the property for its originally authorized purpose, the recipient shall proceed with obtaining disposition instructions, as specified in the terms and conditions of this award.

In addition, should the recipient, during reactor operation, sell or have a change of control, the parties will follow 2 CFR § 910.368 and §910.370, as applicable. If there is a statutory change that allows DOE to vest unconditional title to property in the non-Federal entity, without reference to the above requirements, then GNF agrees to amend this Agreement to delete the foregoing language and substitute: "GNF agrees that all equipment and property will vest unconditionally in the recipient with retroactive effect to the date of award to the extent allowable by applicable law."

#### **(15) SUPPLIES (DECEMBER 2014)**

See 2 CFR § 200.314 for requirements pertaining to supplies acquired under a Federal award. See also § 200.453 Materials and supplies costs, including costs of computing devices.

#### **(16) PROPERTY TRUST RELATIONSHIP (DECEMBER 2014)**

Real property, equipment, and intangible property, which are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

See 2 CFR § 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

If there is a statutory change that allows DOE to vest unconditional title to property in the non-Federal entity, without reference to the above requirements, then DOE agrees to amend this Agreement to delete the foregoing language and substitute the word "RESERVED".

#### **(17) NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS**

The recipient is required to identify and comply with the appropriate NEPA requirements for the selected site. If a DOE-owned site is selected, including (the Hanford site, the following would apply: National Environmental Policy Act (42 USC 4321, et seq.). The recipient is restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. Prohibited actions include but are not limited to: detailed design beyond what is needed to apply for a license under 10 CFR Part 50 or 52 from the U.S. Nuclear Regulatory Commission; purchase of long-lead time equipment that cannot be used at any other site; demolition or decontamination of existing buildings; and site preparation, clearing, ground breaking, excavation, and construction. However, DOE may provide cost- shared funding and appropriate CX coverage for activities necessary to perform site characterization, sampling, and monitoring to support the NEPA process; preparation of conceptual design data, analysis, and documentation (including project planning assistance); and training before a final NEPA decision is issued. Historic preservation obligations must be met before groundbreaking activities occur. If the project is proposed to be located on federally owned land, the recipient may not move forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of either an interim or the final NEPA decision. The recipient must comply with all NRC Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, pursuant to 10 C.F.R. Part 51. NRC will serve as the lead federal agency for NEPA. In addition, if Recipient plans to build its reactor on DOE-owned or leased land, then DOE may be asked to serve as a cooperating agency in NRC's NEPA analysis and recipient would be required to engage with the relevant DOE operations office to support that NEPA review and any other relevant environmental compliance and/or permitting. D-9 GEH Subcontractor Agreement – Execution Version CONFIDENTIAL Prior to issuance of a final NEPA document (Final EA/EIS, FONSI, ROD, Mitigation Action Plan, etc.), NRC and/or DOE, as appropriate, agree to discuss with the recipient any proposed conditions and requirements that may be imposed if NRC and/or DOE, as appropriate, decides to proceed with its proposed action. However, NRC and/or DOE, as appropriate, retain sole discretion on whether to issue a final NEPA document and what conditions to include in it if one is issued. If NRC and/or DOE, as appropriate, decides to proceed with its proposed action subject to conditions, limitations, mitigation requirements, or monitoring requirements specified in a final NEPA document, the Recipient agrees to: 1. abide by the conditions, limitations, mitigation requirements, and monitoring requirements specified in the final NEPA document; 2. negotiate changes to the project schedule, costs, and/or scope as necessary to make effective the requirements or conditions in the final NEPA document; 3. allow NRC and/or DOE, as appropriate, authorized representatives to visit the site and facilities upon notice to verify project status and compliance to include conditions and requirements in the final NEPA document; and 4. submit data or otherwise meet specified reporting requirements that may be in the final NEPA document. 5. If the Recipient

finds the conditions and requirements to be unacceptable, it reserves the right to terminate the Award in accordance with 2 CFR 200.340.

#### **(18) DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS**

Notwithstanding any other terms of this Agreement, the Government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Subcontractor's facilities, or (ii) any costs which may be incurred by the Subcontractor in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

#### **(19) INDEMNITY**

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions, or to the extent such liability arises from a nuclear incident or precautionary evacuation as defined by the Price Anderson Act. Parties shall inform each other as soon as practicable of any suit or action alleging an indemnifiable claim and, to the extent allowed by statute, participate in litigation and settlement.

#### **(20) LOBBYING RESTRICTIONS (MARCH 2012)**

By accepting funds under this award, the Recipient agree that none of the funds obligated on the 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.

#### **(21) NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015)**

By entering into this agreement, the undersigned attests that US SFR Owner, LLC does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information

The undersigned further attests that it does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

## **(22) PROHIBITION ON PERSONALLY IDENTIFIABLE INFORMATION (PII)**

The Recipient/Contractor must not provide PII, either printed or electronic, to the U.S. Department of Energy within any deliverable, report or submittal under this Agreement. Personally Identifiable Information (PII) is any information maintained by the Contractor about an individual, including but not limited to, education, financial transactions, medical history and criminal or employment history, and information that can be used to distinguish or trace an individual's identity, such as his/her name, social security number, date and place of birth, mother's maiden name, biometric data, etc., and including any other personal information that is linked or linkable to a specific individual. This requirement must be incorporated into any and all subcontracts or sub agreements to the lowest tier.

## **(23) CONFIDENTIAL BUSINESS INFORMATION**

The Government acknowledges that the Subcontractor may provide DOE confidential or proprietary business, technical or financial information. DOE will manage this information consistent with the Trade Secrets Act, 18 U.S.C. §1905. DOE will also process any request for release of this information to the public consistent with the Freedom of Information Act (FOIA), 5 U.S.C. §552 and DOE's FOIA regulations, 10 C.F.R Part 1004. DOE agrees that any confidential business, financial, and legal information provided by the Subcontractor is not "data" within the meaning of the Rights in Data clause.

## **(24) LIABILITY DURING OPERATION OF THE ADVANCED DEMONSTRATION REACTOR**

Notwithstanding any other terms of this Agreement, the Government shall not be responsible for or have any obligation (except to the extent provided by the NRC under the Price Anderson Act and 10

CFR Part 140) to the recipient for operation of the advanced demonstration reactor or other recipient facilities operated in connection with the reactor, including any costs which may be incurred by the recipient in connection with the operation of the reactor or related facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement or following the end of the project period of this agreement

#### **(25) WAIVER REQUESTS: PERFORMANCE OF WORK IN THE UNITED STATES**

Work performed (i.e., purchases and labor) under awards must be performed in the U.S., unless otherwise approved, awards proposing foreign purchase of supplies and equipment or for foreign labor performed must clearly specify what work is to be done, by which entity, where the work is to be performed, the estimated time period for the work, the estimated dollar value of the work and the rationale for doing the work outside the U.S.

#### **(26) NATIONAL SECURITY: CLASSIFIABLE RESULTS ORIGINATING UNDER AN AWARD (DECEMBER 2014)**

- a. This award is intended for unclassified, publicly releasable research. You will not be granted access to classified information. DOE does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. The Department may review research work generated under this award at any time to determine if it requires classification.
- b. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this award that you believe requires classification, you must promptly:
  1. Notify the DOE Project Officer and the DOE Award Administrator,10
  2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 20875-0963, for classification review.
  3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control.
- c. RESERVED.
- d. If DOE does not respond within the specified time periods, you are under no further obligation to restrict access to the information.

#### **(27) EXCUSABLE DELAYS**

Except for defaults of Subcontractors or Subcontractors at any tier, the Recipient shall be in an excusable delay position because of any failure to perform this cooperative agreement under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Recipient. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond control and without the fault or negligence of the Recipient. “Default” includes failure to make progress in the work so as to endanger performance.

If the failure to perform is caused by the failure of Subcontractors or Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Recipient and subcontractor/Subcontractor, and without the fault or negligence of either, the Recipient shall not be deemed to be in default, - unless-

- The subcontracted supplies or services were obtainable from other sources.
- The Contracting Officer ordered the Recipient in writing to purchase these supplies or services from the other source; and
- The Recipient failed to comply reasonably with this order.

Upon request of the Recipient, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the completion time shall be revised, subject to the rights of the Government to terminate this cooperative agreement. A decision by the Contracting Officer to terminate the award shall be based on the record and is subject to appeal to the Senior Procurement Executive.

**END OF DOCUMENT**