

NUCLEAR HAZARDS INDEMNITY (2-94)

(a) Authority. This clause is incorporated into this subcontract pursuant to the authority contained in Subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

(b) Definitions. The definitions set out in the Act shall apply to this clause.

(c) Financial Protection. Except as hereafter permitted or required in writing by DOE, the Seller will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Seller provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Seller by DOE.

(d) (1) Indemnification. To the extent that the Seller and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Seller and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Seller and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in Section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident or precautionary evacuation occurring outside the United States, irrespective of the number of persons indemnified in connection with this subcontract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this subcontract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Seller, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Seller or a lower-tier subcontractor of a device utilizing special nuclear material or by-product material, during the course of the subcontract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Seller, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

- (a) Negligence;
- (b) Contributory negligence;
- (c) Assumption of risk; or
- (d) Unforeseeable intervening causes, whether

involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an

event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.

(vi) For the purpose of that determination, "offsite" as that term is used in 10 CFR Part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under the Company's prime contract is being carried on, or any Seller-owned or controlled facility, installation, or site at which the Seller is engaged in the performance of contractual activity under this subcontract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under Subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and Litigation of Claims. The Seller shall give immediate written notice to the Company and DOE of any known action or claim filed or made against the Seller or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by the Company or DOE, the Seller shall furnish promptly to the Company and DOE, copies of all pertinent papers received by the Seller or filed with respect to such actions or claims. DOE and the Company shall have the right to, and may collaborate with, the Seller and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of the Company and DOE, for the payment of any claim that DOE or the Company may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Seller or other person indemnified in any action brought upon any claim that DOE or the Company may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE or the Company, the Seller or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE Obligations. The obligations of DOE and the Company under this clause shall not be affected by any failure on the part of the Seller to fulfill its obligation under this subcontract and shall be unaffected by the death, disability, or termination of existence of the Seller, or by the completion, termination, or expiration of this subcontract.

(h) Effect of Other Clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this subcontract, including the clause entitled Resolution of Disputes, provided, however, that this clause shall be subject to the clause entitled Covenant Against Contingent Fees, Officials Not to Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to this subcontract as required by applicable Federal

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law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil Penalties. The Seller and its lower-tier subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear safety-related rules, regulations, or orders.

(j) Criminal Penalties. Any individual director, officer, or employee of the Seller or of its lower-tier subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations, or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) Inclusion in Lower-Tier Subcontracts. The Seller shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under Section 170b. of the Act or NRC agreements of indemnification under Section 170c. or k. of the Act for the activities under the subcontract.

(l) Effective Date. This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after June 26, 1991.