952.250-70 Nuclear hazards indemnity agreement.

Insert the following clause in accordance with 950.7006:

Nuclear Hazards Indemnity Agreement [December 2024]

(a) *Definitions.* Except as otherwise specified within this clause, all definitions set forth in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this clause.

“Extraordinary nuclear occurrence” means an event that DOE has determined to be such an 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.

“Public liability,” referred to below, is public liability as defined in the Act, which (1) arises out of or in connection with the activities under this contract, including transportation; and (2) arises out of or results from a nuclear incident or precautionary evacuation.

(b) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Act.

(c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the Contractor 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 (a) of this clause. DOE may, however, at any time require in writing that the Contractor 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 Contractor by DOE.

(d) *Indemnification.* To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in paragraph (a) of this clause; and (ii) such legal costs of the Contractor 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 $2,000,000,000 in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(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 Contractor, 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 that—

(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 Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, 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 negligence, contributory negligence, assumption of risk, or 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 any issue or defense based on any statute of limitations, if suit is instituted within three years of 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) For the purposes of making a determination of whether or not there has been an extraordinary nuclear occurrence, “offsite,” as used in 10 CFR part 840, means “away from the contract location,” a phrase that means any DOE facility, installation, or site at which contractual activity under this contract is being carried out, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth in paragraph (e) of this clause—

(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 any injury or damage to a claimant (or claimant's property) that is intentionally sustained by the claimant, or that 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 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 Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (a) of this clause. Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor 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 DOE for the payment of any claim that DOE may be required to indemnify hereunder; and

(2) Appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE 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, the Contractor 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 under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(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 contract, including the Disputes clause, provided, however, that this clause is subject to the clauses at 48 CFR 52.203-5, Covenant Against Contingent Fees, and 970.5232-3, Accounts, Records, and Inspection, and any provisions later added to this contract, as required by applicable Federal law, including statutes, Executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders, and pursuant to section 234C of the Act, for violations of applicable DOE worker safety and health related rules, regulations, and orders. If the Contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under this contract.

(j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowingly and willfully violating the Act, and applicable DOE nuclear safety-related rules, regulations or orders for which violation results in, or if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in Subcontracts.* The Contractor shall insert this clause in any subcontract that may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (a) of this clause. 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.

Effective date:

( ) See note II below for instructions related to this section on Effective Date.

Relationship to general indemnity

( ) See note III below for instructions related to this section on Relationship to General Indemnity.

(End of clause)

Note I

(1) For contracts with an award date after August 16, 2012, do not include an effective date provision.

(2) For contracts with an award date before August 16, 2012—

(i) If the contract contains the Nuclear Hazards Indemnity Agreement clause (June 1996 or prior version), replace the clause at 952.250-70 with this clause and use the EFFECTIVE DATE title and language, as follows:

“Effective Date. This contract was awarded on or after August 8, 2005, and at contract award contained the clause at 952.250-70 (JUN 1996) or prior version. That clause has been deleted and replaced with this clause. The Price-Anderson Amendments Act of 2005, described by this clause, controls the indemnity for any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for civil penalties for violations of the Atomic Energy Act of 1954 under this contract is described by paragraph (i) of this clause.

(ii) If the contract was awarded prior to August 8, 2005, and contains the Nuclear Hazards Indemnity Agreement clause, dated June 1996 or prior version, add this clause in addition to the clause at 952.250-70 or prior version and use the EFFECTIVE DATE title and language, as follows:

“Effective Date. This contract was in effect prior to August 8, 2005, and contains the clause at 952.250-70 (JUN 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005.

The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

Note II

The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added, but that do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

“() To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.”

(End of note)

Parent topic: Subpart 952.2—Text of Provisions and Clauses