

## STATEMENT OF CONSIDERATIONS

CLASS WAIVER OF THE GOVERNMENT'S DOMESTIC AND FOREIGN PATENT RIGHTS AND ALLOCATION OF DATA RIGHTS ARISING FROM THE USE OF DOE FACILITIES AND FACILITY CONTRACTORS BY OR FOR THIRD-PARTY SPONSORS: DOE WAIVER NO. W(C)-2011-009.

### Introduction

The Department of Energy (and its predecessor agencies) (collectively, "DOE" or "Department") considers each of its DOE Facilities (i.e., National Laboratories, single-purpose research facilities, and other Department facilities hereinafter referred to individually as "Facility" or collectively as "Facilities") a unique and valuable national resource that should be made available to the extent feasible for non-Federal research and development activities and studies for third-party Sponsors.

Over the years, DOE has developed various policies, orders and regulations describing the terms and conditions under which third parties can access DOE Facilities and expertise.<sup>1</sup> Among other things, DOE approved Class Patent Waiver W(A)-82-017 ("the 1982 Class Waiver") on June 3, 1982. The 1982 Class Waiver granted title to the third-party Sponsors for inventions arising from the use of DOE Facilities through a Work for Others ("WFO") Agreement in which work under the WFO Agreement was fully funded by the third-party Sponsor.

While use of DOE Facilities by third-party Sponsors has increased significantly under DOE's established policies, it is necessary to update the 1982 Class Waiver to reflect various changes in DOE policies, federal statutes, and lessons learned as a result of several decades of interaction with industry through privately-funded WFO transactions. The changes reflected in this Class Waiver will make it easier for third-party Sponsors to access DOE Facilities and will further accelerate the movement of technology from Facilities to the marketplace and better enable the United States to compete in the global economy of the 21<sup>st</sup> century.

This Class Waiver supersedes the 1982 Class Waiver and provides an updated waiver of rights to Subject Inventions developed under privately-funded WFO agreements under the authority of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2182), and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. § 5908) and the regulations at 10 C.F.R. Part 784 promulgated thereunder.

"Subject Invention" means any invention or discovery of the Contractor, or, to the extent a Sponsor or a Facility subcontractor is performing any work, of the Sponsor or Facility subcontractor respectively, conceived in the course of, or under a WFO transaction or, in the case of an invention previously conceived by the Sponsor or Facility subcontractor, first actually reduced to practice in the course of or under a WFO transaction.

Since Facility subcontracts awarded under a privately funded WFO agreement are funded with the private funds of the Sponsor, the Bayh-Dole Act does not apply and the Department takes title to inventions made under such subcontracts unless waived. In consideration of the fact that the work is being funded with the private funds of the WFO Sponsor and in order to allow Sponsors to consolidate title to inventions developed under privately funded WFOs, DOE waives its title in any Subject Invention made

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<sup>1</sup> This Class Waiver applies to Work for Others performed by DOE's Government-owned, contractor-operated (GOCO) Facilities and does not apply to inventions made by federal employees. DOE has made its unique Government-owned, government-operated (GOGO) Facilities accessible to third parties through similar mechanisms.

under a privately funded WFO subcontract to the third-party Sponsor, subject to the terms and condition of this Class Waiver.

In the case of federally funded WFO agreements, the Bayh-Dole Act applies and DOE Facilities should continue to utilize their established subcontract terms and conditions as approved by DOE/NNSA field Patent Counsel.

#### **Brief History of DOE's Patent and Data Policy for WFO Transactions**

Until the early 1980s, DOE was restricted in its ability in making DOE Facilities widely available to third-party non-Federal Sponsors. The reasons for this limited success was largely attributed to a perception among industry that DOE's patent and data policies created uncertainties in the disposition of intellectual property arising from the use of DOE Facilities that discouraged interaction with the Department.

More specifically, title to inventions developed under a privately-funded WFO agreement vest with the Government under the broad title vesting authorities of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2182), and Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. § 5908) unless waived by DOE. Prior to 1982, non-Federal Sponsors that wished to obtain title for inventions developed under privately-funded WFO agreements were required to submit patent waiver petitions, which were reviewed on a case-by-case basis in accordance with DOE patent waiver regulations.<sup>2</sup> The cumbersome nature of the waiver process as well as the delays incurred in its application served as a barrier to making DOE's Facilities and research and development ("R&D") capabilities widely available to private sponsors and led to dissatisfaction among WFO Sponsors. In essence, Sponsors were reluctant to privately fund R&D at DOE Facilities on their behalf without assurance that they would be afforded adequate rights to the intellectual property developed under such privately-funded arrangements.

In an effort to make DOE Facilities more attractive to third-party Sponsors, DOE approved the 1982 Class Waiver. The 1982 Class Waiver granted title to the third-party Sponsors for inventions arising from the use of DOE Facilities fully funded by third-party Sponsors. Specifically, subject to certain terms and conditions, the 1982 Class Waiver provided third-party non-Federal WFO Sponsors with title to Subject Inventions without the need for the Sponsor to submit a patent waiver petition and undergo the case-by-case review. Thus, the 1982 Class Waiver was a significant change in DOE policy and led to considerable increases in use of DOE Facilities. Despite improving access to DOE Facilities, the 1982 Class Waiver had limitations, including the lack of a clear second option for allowing Facility Contractors to retain title to inventions that were not elected by the Sponsor. This lack of clarity required Facility Contractors to request invention waivers on a case-by-case basis, which created an additional burden on both the Contractor and DOE.

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<sup>2</sup> Since privately-funded WFO agreements do not fall within the definition of "funding agreements" as defined by Public Law 96-517 (35 U.S.C. § 202 et seq.), commonly referred to as the Bayh-Dole Act (Bayh-Dole), title to inventions developed under such agreements vest with the Government under the broad title vesting authorities of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2182), and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. § 5908) unless waived.

The 1982 Class Waiver was followed by the issuance of a series of DOE Orders and Manuals addressing Work for Others, which have been updated periodically to provide guidance to DOE Facilities Contractors to ensure a level of consistency of WFO terms and conditions across the DOE complex.

In October 1996, DOE issued an Administrative Update (“the ’96 update”) to the 1982 Class Waiver that addressed some of the perceived issues or ambiguities of the 1982 Class Waiver, including the identification of certain fact patterns where it may not be in the best interest of the United States and the general public to allow non-Federal Sponsors to retain title to the inventions of the Facility Contractor. The ’96 update also allowed Facility Contractors to retain title to WFO inventions in certain limited circumstances.

On November 26, 2008, the Department posted a Notice of Inquiry (“the ’08 NOI”) in the Federal Register entitled, “Questions Concerning Technology Practices at DOE Facilities,” as part of a larger review of the Department’s technology partnering agreements. One of the questions presented related to the disposition of intellectual property rights in privately-funded WFO transactions.

The responses to the ’08 NOI were varied but several DOE Facility Contractors urged the Department to grant Facility Contractors the first right to retain title to inventions developed under privately-funded WFO agreements instead of the third-party Sponsor. Not surprisingly, large and small businesses expressed concerns over such a change in disposition of title and suggested that granting Facility Contractors title to privately-funded WFO inventions could significantly impact private sector engagement with DOE Facilities.

#### **Scope of this Class Waiver**

This Class Waiver applies to Subject Inventions developed under privately-funded WFO agreements with third-party non-Federal Sponsors procuring research and development and related technical services from Management and Operating (“M&O”) Contractor Facilities.

This Class Waiver reflects a revised WFO policy that resulted from a careful consideration of comments submitted by both industry and the DOE Facility community in response to the ’08 NOI and offers enhanced rights to both third-party Sponsors and DOE’s Facility Contractors. Subject to the conditions set forth below, third-party non-Federal Sponsors will continue to retain title to privately-funded WFO inventions made by the Facility Contractor consistent with the goal of the Department to increase interaction with private entities.<sup>3</sup>

Although Sponsors will continue to be granted title to privately-funded WFO inventions created by the Facility Contractor, this Class Waiver now provides Facility Contractors a clear second option to elect such inventions and commercialize them through Facility technology transfer efforts.

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<sup>3</sup> See Secretarial Memorandum entitled “Proposals to improve the allocation of IP generated under non-federal work for others (WFO) agreements,” dated April 14, 2011.

The waiver of title to the Sponsor shall be automatic, and granted without a request or petition by the Sponsor, upon a determination from DOE/NNSA field Patent Counsel that:<sup>4</sup>

- (1) The work to be performed under the agreement is not covered by another contract or arrangement falling under DOE's statutory patent policy, and is not of sufficient interest to the DOE programmatic mission responsibility to justify DOE supporting the work in whole or in part with direct program funding;
- (2) The Sponsor is providing appropriate cost reimbursement for the services performed and/or facilities used as set forth in this Class Waiver; and
- (3) The terms and conditions for the agreement with the third-party non-Federal Sponsor comply with this Class Waiver and instructions for its implementation as issued by the Assistant General Counsel for Technology Transfer and Intellectual Property (GC-62).

In most privately-funded WFO agreements IP rights will be waived to the Sponsor, however, there are certain situations where waiver of rights to the Sponsor may be denied including: (1) where the Sponsor declines the waiver; (2) where one of the identified exceptions (see next section) applies; or (3) because the Department, acting through the Contracting Officer and based on a determination of DOE/NNSA field Patent Counsel, finds that in a particular WFO transaction it is not in the best interest of the United States and the general public to allow the non-Federal Sponsor to retain title to inventions of the Facility Contractor. There may also be situations where the Sponsor desires different rights than offered under this Class Waiver.

#### **Identified Exceptions to the Waiver**

DOE has identified several fact patterns where waiver of title to the Sponsor should be denied or would not apply even when the Sponsor might desire full waiver. They are:

- (a) When any Subject Invention that might be made would be a research tool, (e.g., transgenic animals, etc.), and there is a Departmental and public interest in having the tool available to many potential research and commercial organizations;
- (b) When the Sponsor is either foreign-owned or -controlled or is sponsoring research on behalf of a foreign entity. However, this Class Waiver may apply to a WFO transaction under such circumstances with approval by the DOE/NNSA field Patent Counsel and with the concurrence of the cognizant Field Office or Headquarters program official;
- (c) When the Sponsor's interest is in fewer fields of use, and utilization of the Facility or commercialization of the underlying technology can be maximized by limiting the Sponsor's exclusivity in any inventions to a particular field of use; and
- (d) When Federal funding is used to fund, at least partially, the project either directly from a Federal Agency or indirectly through a third-party recipient of Federal funds or falls within

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<sup>4</sup> Since these three determinations are based on information supplied by Facility Contractors, DOE Patent Counsel may, at your discretion, authorize the Contractor to determine (1)-(3).

the scope of a Federally-funded contract or award (excluding an M&O contract for a Facility).

In providing advice to the Contracting Officer, DOE/NNSA field Patent Counsel is the final determiner that an exception to this Class Waiver should apply. With concurrence of DOE/NNSA field Patent Counsel, the Contracting Officer may delegate to the Facility Contractor the authority to determine whether the fact patterns (a), (c) or (d) exist.

Whenever fact pattern (b) is believed to exist, DOE/NNSA field Patent Counsel must approve the disposition of invention rights. Determinations regarding (a) and (c) are not mandatory and are judgment calls that should be made by balancing the needs of both the Sponsor and the Contractor.

When exception (d) applies, this Class Waiver is not applicable. However, Facility Contractors may have a right to retain title to Subject Inventions developed under federal funding via statute or other previously-granted authority.<sup>5</sup> Therefore, Facilities should continue to follow established procedures for performing Federally funded WFOs, CRADAs, and User Agreements as specified in their M&O contracts with DOE.<sup>6</sup>

#### **Allocation of Intellectual Property Rights under the Waiver**

*Waiver to the Sponsor Granted:* Subject to the terms and conditions described herein (including appendices) or other guidance issued by DOE's Assistant General Counsel for Technology Transfer and Intellectual Property, this Class Waiver waives to the Sponsor title to Subject Inventions made in the course of or under a privately-funded WFO Agreement or Facility subcontract issued therefrom. Where appropriate, the filing of patent applications by the Sponsor is subject to DOE and other Government security regulations and requirements.

If the Sponsor declines to elect title, discontinues the filing or prosecution of a previously elected Subject Invention, or decides not to pay a maintenance fee covering a Subject Invention, the Facility Contractor will be permitted to take title to such inventions subject to the terms and conditions of the Prime Contract governing the right of the Facility Contractor to elect title to inventions. If the Sponsor declines to elect title to a Subject Invention, the Sponsor may be granted a nonexclusive, nontransferable, royalty-free license for its own use in such inventions as mutually agreeable between the parties.

*Waiver to the Sponsor is Denied or Declined:* When the Sponsor declines this Class Waiver prior to execution of the agreement, or when waiver of title to the Sponsor has been denied (i.e., determined that an exception applies), this Class Waiver grants the Contractor the right to elect title to any of its Subject Inventions made under the agreement subject to the terms and conditions of the Prime Contract governing

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<sup>5</sup> In 1984, the Bayh-Dole Act was amended to allow non-profit M&O Contractors the same right to elect to retain title to their inventions that was given to non-profits, small businesses and universities under the original Act. DOE has issued individual patent waivers to Facilities operated by for-profit Contractors to retain title to inventions made under Federal funding similar in scope to the rights granted under the Bayh-Dole Act, as amended. In certain situations, such as in "Other Transactions" a different disposition of patent rights may be mandated, however, these situations are rare.

<sup>6</sup> As a result of the 1984 amendment to Bayh-Dole, DOE Facilities increasingly utilized the WFO process as a vehicle for performing work for other federal agencies directly through interagency agreements and indirectly through third-party non-federal Sponsors that fund work at a Facility with previously-acquired federal funds.

the right of the Facility Contractor to elect title to inventions. (See attached Appendix B.) If a waiver of rights to the Sponsor is denied, this Class Waiver grants to the Sponsors and Facility subcontractors the right to elect title to their own Subject Inventions, subject to the requirement to report inventions to DOE, the standard Government Use License, and U.S. Preference (35 U.S.C. § 204), and such other conditions consistent with DOE patent waiver policy

DOE shall retain title to any Subject Invention which is not retained by the Sponsor, Facility Contractor, or the Facility subcontractor.

Where only exception (c) applies, the Sponsor must be granted a royalty-free exclusive license in a predetermined field of use or fields of use corresponding to the Sponsor's Interest as mutually agreed to by the Sponsor and Facility Contractor. Under exception (a) or (b), the Facility Contractor may negotiate a license with the Sponsor as appropriate.

In reporting Subject Inventions, the Parties shall identify the WFO agreement under which the Subject Invention was made and specify the rights (in both Subject Inventions and generated data) that have been reserved by the Government pursuant to this Class Waiver, and must otherwise be consistent with applicable laws and DOE policies.

#### **Government License to Subject Inventions**

Under this Class Waiver, the Government will typically retain the standard Government Use License, which is a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world.

Alternatively, Sponsors may seek, subject to (a) and (b) below, application of a narrowed Government Use License ("Government R&D License") for research and development purposes only. The Government R&D License grants to the Government, for R&D purposes only,<sup>7</sup> a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world.

- (a) Any use of the Government R&D License must be accompanied by expanded Government access to data generated under the WFO agreement. Specifically, if a privately funded WFO agreement is to include a patent rights clause having the narrower Government R&D License, then the proprietary data clause must be replaced with a "Protected WFO Information" data clause (see attached Appendix C) that limits the period of protection for generated data to no more than five (5) years. Subject to DOE/NNSA field Patent Counsel approval and the mutual agreement of the Parties, the period of protection for Protected WFO Information may be extended for one extension term that is no more five (5) years in duration and which begins immediately upon expiration of the initial period of protection.

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<sup>7</sup> R&D purpose includes all research, development and demonstration activities by or on behalf of the Government, including uses at Federal Facilities to perform work under privately-sponsored agreements.

- (b) The application of the Government R&D License requires approval by DOE/NNSA Patent Counsel after consulting with the cognizant DOE Program Office because application of the narrower Government R&D License may affect ongoing programs at either DOE or another Federal Agency.<sup>8</sup>

In reporting Subject Inventions, the Sponsor shall identify the WFO agreement under which the invention was made and specify the rights (in both Subject Inventions and generated data) that have been reserved by the Government pursuant to this Class Waiver. The Government R&D License will not be allowed for WFO transactions related to national security.<sup>9</sup> Special attention also should be given to proposed WFO transactions involving environmental management programs, or in situations where the WFO transaction involves work to be performed for the Facility Contractor, Contractor's parent, member, subsidiary, or other entity in which the Contractor, Contractor's parent, member or subsidiary has an equity interest. The foregoing examples of special circumstances are not exhaustive.

#### **Allocation of Data Rights**

*Greater Data Rights for Generated Data:* Although Data Rights were not specifically covered by the 1982 Class Waiver, DOE has traditionally allowed non-Federal WFO Sponsors to designate data produced under the WFO agreement by most Facilities as "Proprietary Data" as long as the funding is not from Federal sources (referred to herein as "enhanced data protection."). Unless prohibited or limited by this Class Waiver, DOE authorizes the continuation of enhanced data protection for data generated under privately funded WFO agreements.

Enhanced data protection is not appropriate or warranted in a number of situations, even where the full Government Use License is retained for Subject Inventions. In those cases, this Class Waiver allows the flexibility to negotiate greater data rights. Specifically, the applicability of enhanced data protection, including proprietary or protected data protection to foreign Sponsors is not automatic and requires approval from DOE/NNSA field Patent Counsel with input from the applicable HQ Program Office as appropriate.

Other situations in which enhanced data protection may not be appropriate or warranted are: (1) The WFO Sponsor is not providing proprietary information or material to the Facility; (2) the WFO Sponsor is not likely to use the results of the work for commercial activity or is an institution that does not want to assert proprietary rights in the data to the exclusion of any rights in the Government; (3) the WFO Sponsor cannot show that the primary use of the data will be in the United States rather than in a foreign country; (4) the WFO Statement of Work is directly related to specific ongoing projects (this is an instance where perhaps 5-year protection might be appropriate); (5) the WFO Statement of Work requires only a paper study and is not directed to a particular commercial product of the WFO Sponsor (this is an instance where unlimited data rights in the Government might be appropriate); (6) per this Class Waiver, title to some of the Subject Inventions remains at the Facility pursuant to the M&O Contract; (7) any benefit to the U.S. Government would be lost by the removal of the data from the Facility. As previously noted, if a transaction includes the narrower Government R&D License for Subject Inventions, then the

<sup>8</sup> DOE program offices may grant blanket approvals or issue blanket denials for the use of the Government R&D license in certain program areas.

<sup>9</sup> The scope of subject matter that will not be eligible for performance under an WFO transaction on the basis of this national security exclusion will be described in guidance issued by cognizant Program Offices.

proprietary data clause must be replaced with a "Protected WFO Information" data clause (See, Appendix C) that limits the period of protection for generated data for no more than five (5) years, unless extended as previously described.

DOE recognizes that some Facility Contractors have a policy prohibiting the protection of Facility Technical Data and provides alternate language to comply with this policy. Nothing in this Class Waiver shall prevent a Facility Contractor from continuing to applying such policies.

When a non-Federal Sponsor is funding the WFO agreement with funding from another federal agreement (i.e., cooperative agreement, SBIR, grant), special data protection may be available in situations where the Sponsor's existing federal award contains statutory authority for special data protection (i.e., EPACT, SBIR/STTR data protection) that justifies enhanced protection of information generated under the WFO agreement. Absent statutory authority for special data protection in the Sponsor's previous federal agreement, the Government shall have unlimited rights in all data generated under a federally-funded WFO agreement. DOE/NNSA field Patent Counsel will be the final determiner of whether special data protection is applicable.

*Greater Data Rights for Government and Facility:* Before an WFO transaction is entered into, the Facility Contractor or the Department may require that greater data rights be obtained for the Government or the Facility. The data rights acquired by the Government/Facility depend on the circumstances, and can range from unlimited rights to some lesser level of protection, such as a period of protection (e.g., five (5) years), or having only part of the data being proprietary to one of the Parties. The Department or the Facility Contractor can also obtain greater rights in copyright, especially where the transaction covers work that is derivative of prior work at the DOE Facility.

#### **Elimination of March-In Rights**

This Class Waiver does not apply the Government's march-in rights to Subject Inventions, subject to the exception below where title is retained by the Facility Contractor. Although rarely, if ever exercised, these rights were often perceived as a barrier to access by industry and were not statutorily mandated in the case of a Sponsor privately funding WFO work at a Facility. The decision to not apply march-in rights to WFO Subject Inventions elected by Sponsors aims to maximize the availability of DOE Facilities to Funding Sponsors who have made substantial private investment in proprietary technology and to enhance the potential for such technology to be further commercialized. Because the Government still retains a Government license in any Subject Inventions, the Government's interests are believed to be adequately protected in the absence of such march-in rights. All Subject Inventions will continue to be subject to the requirements of the U.S. Preference clause pursuant to 35 U.S.C. § 204.

Subject Inventions that revert to the Facility Contractor and are elected under the applicable M&O Contract will be governed by the provisions of the applicable M&O Contract.

#### **Existing and Future Waivers Affected By This Class Waiver**

This Class Waiver supersedes the 1982 Class Waiver as well as the '96 Update issued on September 24, 1996. This Class Waiver does not affect the Class Waivers covering CRADAs or the use of DOE's designated User Facilities.



Any agreements executed under the 1982 Class Waiver remain in effect. However, some Facilities utilize the prior 1982 Class Waiver by entering into master agreements with Sponsors that have no termination date. Separate "task orders" are approved by DOE under the master agreement. Facilities may continue to operate under the terms and conditions utilized in such master agreements provided that DOE/NNSA field Patent Counsel approve use of the existing master agreements as the legal equivalent of the agreement authorized by this Class Waiver. This Class Waiver will not impose a "sunset date" where existing WFO agreements must be terminated.

Furthermore, this Class Waiver grants the Facility Contractor the right to take title (subject to the terms and conditions of its Prime Contract) to Subject Inventions developed under WFO agreements executed under the authority of the 1982 Class Waiver that were not retained by the Sponsor because either the Sponsor was not granted the Class Waiver, the Sponsor declined application of the Class Waiver, or because the Sponsor decided not to elect title to the Subject Invention.

#### **Intellectual Property Terms for Privately-Funded WFO Transactions<sup>10</sup>**

When it has been determined that waiver of title to Subject Inventions to the Sponsor is appropriate, work performed under a privately-funded WFO agreement will be pursuant to the standard intellectual property terms and conditions attached hereto as Appendix A.

In situations where the Sponsor declines title to Subject Inventions prior to the execution of the agreement or when waiver of rights to the Sponsor has been denied (*e.g.*, due to the application of one of the exceptions of this Class Waiver), the work performed under a privately-funded WFO agreement will be pursuant to the intellectual property terms attached hereto as Appendix B.

When it has been determined that waiver of title to Subject Inventions to the Sponsor is appropriate and the Parties have been granted a request to incorporate the Government R&D License, work performed under a privately-funded WFO agreement will be pursuant to the alternate intellectual property terms and conditions attached hereto as Appendix C.

With not less than thirty (30) days notice to Facility Contractors, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property may periodically update the terms found in Appendices A, B, and C by issuing administrative updates to this Class Waiver. A Facility Contractor may utilize local variants of these terms and conditions as long as DOE/NNSA field Patent Counsel has determined in writing that such terms are the legal equivalent.

Subject to a reserved Government Use License as appropriate, the Parties may assert copyright to any data generated within the scope of a WFO transaction and exercise discretion in allocating such copyright rights between the Parties.

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<sup>10</sup> For WFO transactions where no research, development, or demonstration is to be conducted in performance of the Scope of Work, the patent rights clause may be reserved. The Facility Contractor must timely notify local DOE/NNSA field Patent Counsel before entering into WFO agreement of its intent to reserve the patent rights clause. Failure to include the applicable patent provisions may result in Government ownership of Subject Inventions.

**Conclusion**


Providing the disposition of intellectual property rights described herein reflects changes since 1982 in Federal Statutes and DOE Technology Transfer Policy and will best encourage the utilization and further development of the technology developed at DOE Facilities. Accordingly, this Class Waiver is consistent with the objectives and considerations of DOE's waiver regulations set forth in 10 C.F.R. Part 784.

The Assistant General Counsel for Technology Transfer and Intellectual Property shall be responsible for issuing instructions for implementation of this Class Waiver in accordance with DOE regulations for the waiver of patent rights.

Accordingly, in view of the objectives to be attained and the factors to be considered under DOE's statutory waiver policy, all of which have been considered, it is recommended that a waiver of U.S. and foreign patent rights, in the situations described above, will best serve the interests of the United States and the general public. It is therefore recommended that this Class Waiver be granted.

  
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Assistant Chief Counsel  
Intellectual Property Law Division  
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Date: 3/13/2012

  
Emily G. Schneider  
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Intellectual Property Law Division  
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Date: 3/13/2012

Based on the foregoing Statement of Considerations, it is determined that the interests of the United States and the general public will be served by a waiver of patent rights of the scope determined above, and, therefore, the waiver is granted.

**CONCURRENCE:**

  
[Redacted Signature]  
Under Secretary for Science

Date: 5/1/12


  
[Redacted Signature]  
Under Secretary for Energy

Date: MAY 1, 2012

  
[Redacted Signature]  
Under Secretary for Nuclear Security

Date: 5/1/12

**APPROVAL:**

  
[Redacted Signature]  
John T. Lucas  
Assistant General Counsel for Technology Transfer  
and Intellectual Property (GC-62)

Date: May 3, 2012