IMPLEMENTATION OF PERSONAL IDENTITY VERIFICATION (PIV) FOR COVERED SELLER EMPLOYEES

1. **Applicability.** This Clause applies to *Covered Seller Employees* as defined in Section 2, *Definitions*.

2. **Definitions.**

(a) *Access control*: The process of determining the permissible activities of users and authorizing or prohibiting activities by each user. Controlling a user's access to facilities and computer systems includes setting rights and permissions that grant access only to authorized users. There are two types of access control—physical access and logical access:

(1) *Physical access* control focuses on restricting the entry or exit of users from a physical area, such as a building or a room in a building.

(2) *Logical (cyber) access* control is used to determine what electronic information and systems users and other systems may access and what may be done to the information that is accessed.

(b) *Adjudicate*: The act of making a judgment regarding a person or about a situation based on an established, formal process.

(c) *Adjudication*: An evaluation of pertinent data contained in a background investigation, as well as any other relevant information made available, to determine whether an individual is eligible for access to Company or DOE/NNSA information technology systems or facilities.

(d) *Covered Seller Employee(s)*: An Uncleared Seller Employee(s), not being processed for a DOE clearance, who requires (1) *physical access* greater than 179 days to any Company-owned or –leased area or DOE/NNSA-owned or -leased area or (2) *logical (cyber) access*, which includes remote access, to DOE/NNSA or Company information technology systems greater than 179 days. This includes any physical and logical access combination greater than 179 days. Covered Seller Employees will not include Foreign Nationals as they must be reviewed according to DOE O 142.3A, *Unclassified Foreign Visits and Assignments Program*, or successor directive.

(e) *Enrollment station*: Equipment used to capture the PIV applicant's required information, including biographical data, identity documents, photograph, fingerprints, and biometric fingerprint image. This equipment typically consists of a computer monitor/keyboard, personal identification number (PIN) pad, document scanner, camera, network connection, back-end database, and software.

Homeland Security Presidential Directive (HSPD)-12 Credential enrollment stations are located in DOE/NNSA or Company Badge offices. A fixed enrollment station is a permanent location with a General Services Administration-provided computer, equipment, and operator who handles enrollment and activation of DOE HSPD-12 credentials (also handles PIN resets).

(f) *Officially Designated Federal Security Authority (ODFSA)*: Federal employees who possess the appropriate knowledge and responsibilities for each situation to which they are assigned through delegation.
Delegation authority for these positions is originated according to direction from the accountable Program Secretarial Officer (or the Secretary or Deputy Secretary for Departmental Elements not organized under a Program Secretarial Office), who also provides direction for which of the ODFSA positions may be further delegated. Each delegation must be documented in writing. The delegation may be included in other security plans or documentation approved by or according to direction from the accountable principal. Each delegator remains responsible for the delegate's acts or omissions in carrying out the purpose of the delegation.

(g) *Company or DOE/NNSA Information Technology (IT) System*: An information system that is owned or operated by Company or DOE/NNSA or by Sellers on behalf of Company or DOE/NNSA to accomplish a federal function.

(h) *PIV Determination (suitability)*: A decision by DOE/NNSA or Company that a person is suitable or not suitable to possess a PIV.

(i) *Reciprocity*: Mutual exchange and acceptance of a PIV determination made by another entity.

(j) *Replacement Employee*: The employee that replaces a Covered Seller Employee who receives an unfavorable Final Decision in Subsection 3(k). The Replacement Employee (i) must satisfy the requirements of Seller's Agreement with Company and (ii) if considered a Covered Seller Employee as defined herein, Seller must reasonably believe the Replacement Employee can successfully be processed for PIV in accordance with this Clause.

(k) *Tier 1 Background Investigation*: Investigations designated for low risk, non-sensitive positions, including HSPD-12 credentialing. These investigations require the use of the Standard Form (SF) 85, Questionnaire for Non-Sensitive Positions or use of appropriate e-QIP version. Tier 1 investigations should not be confused with Tier 3 or 5 investigations required for access to classified matter of nuclear material which have significantly longer processing times.

(l) *Uncleared Seller Employee*: A Seller employee not requiring access to classified matter of nuclear material.

3. **Requirements.**

(a) Covered Seller Employees must be processed for PIV.

(b) Seller, including its lower-tier subcontractors, is responsible for identifying Covered Seller Employees. Unless otherwise directed by the Procurement Representative in writing or by the terms of the Agreement, Seller must provide a list of *all* Covered Seller Employees to the Subcontract Technical Representative within thirty (30) calendar days of award of the Agreement (or for active agreements, within thirty (30) calendar days of the modification incorporating this Clause). The list of Covered Seller Employees shall identify the employees by name and, if available, Local Site Specific Only badge number.

(c) This Clause does not preclude Covered Seller Employees from undergoing a PIV when access is less than 179 days.

(d) Unless otherwise provided in this Agreement, Covered Seller Employees are permitted (i) physical access to any Company-owned or –leased area or DOE/NNSA-owned or -leased area or (ii) logical (cyber) access, which includes remote access, to DOE/NNSA or Company information technology systems.

(e) Covered Seller Employees may be issued a Homeland Security Presidential Directive (HSPD)-12 PIV credential only when the required Tier 1 or equivalent background investigation has been favorably adjudicated. Company may require Covered Seller Employees to retain the issued Local Site Specific Only badge instead of printing a new HSPD-12 credential.

(f) Covered Seller Employees are subject to the minimum and the supplemental PIV credentialing standards set forth in Section 4, *PIV Credentialing Standards*.

(g) *Investigation Requirements.*

(1) A Tier 1 investigation or equivalent is the minimum requirement. Reinvestigations for PIV determinations are not required.

(2) Company will designate the proper position sensitivity using the Office of Personnel Management (OPM) Position Designation Tool.

(3) Company will provide the standard form (SF)-85, *Questionnaire for Non-Sensitive Positions*, and related documents, such as the OF-306 *Declaration for Federal Employment*, needed to conduct a Tier 1 investigation to the Office of Personnel and Facility Clearances and Classification (OPFCC) via OPM's Electronic Questionnaire for Investigations Processing (e-QIP).

(4) Company will sponsor Covered Seller Employees in the US Access system prior to having the Covered Seller Employee use the enrollment station for the fingerprint check. Company will have Covered Seller Employees use the enrollment station to capture fingerprints to be sent to the Defense Counterintelligence and Security Agency (DCSA). OPFCC will provide fingerprints for processing.

(h) Approvals of PIV determinations are final and are not subject to further investigation. (But see Section 5, *Ongoing Maintenance of the Credential*.)

(i) Company will pay for a Covered Seller Employee's *initial* Tier-1 investigation or minimum equivalent required investigation to satisfy the requirements of this Clause. Any costs, time, or submissions associated with a Covered Seller Employee's response/appeal, as discussed in Subsection (j), *Denial of PIV Determination for Covered Seller Employees*, shall be borne by Seller or the Covered Seller Employee.

(j) *Denial of PIV Determination for Covered Seller Employees.*

(1) *OPFCC Notification.* When the Adjudicator determines that a Covered Seller Employee has not provided his or her verifiable identity, or is found unsuitable, OPFCC must promptly provide the individual reasonable notice of the determination including the reason(s). The notice must state:

(a) The specific reason(s) for the determination.

(b) The Covered Seller Employee's right to appeal in writing.

(c) The information the Covered Seller Employee is required to address.

(d) The time limit (i.e., 15 calendar days) in which the Covered Seller Employee has to respond/appeal.

(e) The address to which the response/appeal must be sent.

(2) *Response.* The Covered Seller Employee has 15 calendar days from receipt of the OPFCC notification to respond/appeal. The Covered Seller Employee must respond/appeal in accordance with the OPFCC notification.

(k) Final Decision.

(1) If the Covered Seller Employee fails to respond to an OPFCC notification described above within 15 calendar days, OPFCC will issue a formal decision of denial to the individual. The Officially Designated Federal Security Authority (ODFSA) will also be notified of the decision and will notify Company and/or Seller. The Covered Seller Employee must be denied (i) physical access to Company -owned or –leased areas and DOE/NNSA-owned or –leased areas and (ii) logical access to Company and DOE/NNSA information technology systems.

(2) If the Covered Seller Employee provides a written response for the appeal process, OPFCC must consider the information prior to rendering a final determination. OPFCC will issue a written decision to the Covered Seller Employee and notify the applicable federal office, which will notify Company and/or Seller.

(a) If the Covered Seller Employee receives a favorable determination, a PIV credential may be issued.

(b) If the Covered Seller Employee receives an unfavorable determination, a PIV credential will not be issued and the Covered Seller Employee must be denied (i) physical access to Company -owned or –leased areas and DOE/NNSA-owned or –leased areas and (ii) logical access to Company and DOE/NNSA information technology systems.

(i) Seller is responsible for immediately removing the Covered Seller Employee from the worksite and ensuring the immediate disabling of the Covered Seller Employee's access to all Company and DOE/NNSA information technology systems, including remote access.

(ii) Seller is responsible for providing Company a Replacement Employee. If applicable, Company will process the Replacement Employee for PIV in accordance with this Clause, and Seller shall promptly provide the identifying information in Subsection 3(b), *Requirements*, of the Replacement Employee to the Subcontract Technical Representative. If the Replacement Employee receives an unfavorable Final Decision, Company may pursue all available remedies under its Agreement with Seller. Seller shall bear the costs of processing Seller's subsequent Replacement Employees for PIV, unless Company, in its sole discretion due to unusual circumstances, elects to bear the costs.

(iii) Specific details regarding the suitability issues will not be provided to Seller. The PIV credentialing standards (Section 4) applied to the Covered Seller Employee's denial may be provided to the ODFSA upon request.

(3) Seller cannot request a subsequent PIV (reconsideration) for an individual until 1 year after the Final Decision date. A decision to deny reconsideration is not subject to further appeal.

(l) Subsequent information and reportable items must not be reported to OPFCC because the PIV program does not include a requirement for continuous evaluation.

4. **PIV Credentialing Standards.**

(a) Minimum Homeland Security Presidential Directive (HSPD)-12 PIV credentialing standards. In accordance with OPM guidelines, a PIV card will not be issued to a Covered Seller Employee if any of the following applies:

(1) The Covered Seller Employee is known to be, or reasonably suspected of being, a terrorist;

(2) Seller is unable to verify the Covered Seller Employee's claimed identity;

(3) There is a reasonable basis to believe[1] that the Covered Seller Employee has provided fraudulent information concerning his or her identity;

(4) There is a reasonable basis to believe the Covered Seller Employee will attempt to gain unauthorized access to classified documents, information protected by the *Privacy Act*, information that is proprietary in nature, or other sensitive or protected information;

[1] A reasonable basis to believe occurs when a disinterested observer, with knowledge of the same facts and circumstances, would reasonably reach the same conclusion.

(5) There is a reasonable basis to believe the Covered Seller Employee will use an identity credential outside the workplace or inappropriately; or

(6) There is a reasonable basis to believe the Covered Seller Employee will use federally controlled information systems unlawfully, make unauthorized modifications to such systems, corrupt or destroy such systems, or engage in inappropriate uses of such systems.

(b) Supplemental HSPD-12 PIV Card Credentialing Standards.

(1) Supplemental standards are intended to make certain that the issuance of a PIV credential to a Covered Seller Employee does not create an unacceptable risk, when the Covered Seller Employee is not subject to an adjudication of suitability for employment in the competitive service under 5 CFR part 731, of qualification for employment in the excepted service under 5 CFR part 301 or under a similar authority, or of eligibility for access to classified information under Executive Order 12968.

(2) A PIV credential may be denied or revoked based on one of the supplemental credentialing standards listed under this paragraph (b). In the following standards, an *unacceptable risk* refers to a risk to life, safety, or health of employees, contractors, vendors, or visitors; to the Government's physical assets or information systems; to personal property; to records, including classified, privileged, proprietary, financial, or medical; or to the privacy of data subjects.

(3) The following standards must apply to Sellers not subject to federal suitability or security clearance adjudication.

(a) There is a reasonable basis to believe:

(i) based on the Covered Seller Employee's misconduct or negligence in employment, that issuance of a PIV card poses an unacceptable risk;

(ii) based on the Covered Seller Employee's criminal or dishonest conduct, that issuance of a PIV card poses an unacceptable risk;

(iii) based on the Covered Seller Employee's material, intentional false statement, deception, or fraud in connection with contract employment, that issuance of a PIV card poses an unacceptable risk;

(iv) based on the nature or duration of the Covered Seller Employee's alcohol abuse without evidence of substantial rehabilitation, that issuance of a PIV card poses an unacceptable risk; and

(v) based on the nature or duration of the Covered Seller Employee's illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation, that issuance of a PIV card poses an unacceptable risk;

(b) A statutory or regulatory bar prevents the Covered Seller Employee's contract employment; or would prevent federal employment under circumstances that furnish a reasonable basis to believe that issuance of a PIV card poses an unacceptable risk; or

(c) The Covered Seller Employee has knowingly and willfully engaged in acts or activities designed to overthrow the U.S. Government by force.

5. **Ongoing Maintenance of the Credential.** If a Covered Seller Employee receives an HSPD-12 credential, the credential may be printed with an expiration date five years from the date of enrollment. If Seller's work under its Agreement is completed prior to the HSPD-12 expiration date, Seller must follow the direction of the Procurement Representative and/or Company Personnel Security related to managing HSPD-12 credentials in accordance with specific Agreement expiration dates. The certification on the HSPD-12 credential must be updated, or rekeyed, every three years. Covered Seller Employees will follow the same process currently in place for cleared individuals to receive notification and report to the Y-12 Visitor Center to update the certification. Credentials with expired or inactive certificates are invalid and Personnel Security will initiate action to retrieve the badge.

6. **Flowdown.** Seller must flowdown the substance of this Clause to subcontracts at any tier to the extent any lower-tier subcontractor employees meet the definition of a Covered Seller Employee as defined in Section 2, *Definitions*.