

### A. PURPOSE.

Seller must establish a written Workplace Substance Abuse Program (WSAP) in accordance with the requirements of this article to detect the use of illegal drugs and alcohol by Seller employees or lower-tier subcontractors that are assigned to perform work under this Agreement (i) in a “Testing Designated Position” or a “Safety Sensitive Position,” and (ii) at a site owned or controlled by NNSA, DOE or Company, such as the Y-12 National Security Complex.

### B. DEFINITIONS.

(1) **Safety Sensitive Position (SSP)** means a position that requires heightened scrutiny based on the potential for harm to the health or safety of the individual holding the position, to other individuals, or the environment. Seller must consider whether the position is one where impairment by drugs or alcohol, or a momentary lapse in attention, could threaten the public or the environment or result in injury or death when designating a position as a SSP. For example, a SSP would include, but is not limited to, a position where the Seller employee or subcontractor would:

- Operate or maintain machinery or equipment in proximity to other individuals or public roadways;
- Provide emergency, medical, or fire services;
- Work with live electric or gas lines;
- Work with nuclear, radiological, or toxic materials or chemicals that pose an obvious and immediate risk to other’s health and safety if mishandled; or
- Perform work at a construction site where momentary inadvertence would pose an obvious and immediate risk to the health or safety of others.

(2) **Testing Designated Position (TDP)** means a position as described in 10 C.F.R. § 707.7(b) and (c).

### C. REQUIREMENTS FOR SELLER’S WSAP.

(1) **Baseline Requirements.** Seller’s written WSAP must be consistent with the baseline elements in 10 C.F.R. Part 707 and Mandatory Guidelines of the Department of Health and Human Services and subsequent amendments to those guidelines. The Mandatory Guidelines can be found at <https://www.samhsa.gov/substance-use/drug-free-workplace/forms#hhs-guidelines>, and the baseline elements of a written WSAP are located in 10 C.F.R. § 707.5. Details of how the elements must be implemented are located throughout the remainder of 10 C.F.R. Part 707. It is the responsibility of Seller to review and interpret 10 C.F.R. Part 707 prior to development and implementation of its WSAP.

(2) **Company Approval.** Seller’s written WSAP, including any revisions or new WSAP, must be submitted to Company’s Subcontract Technical Representative (STR), with a copy

sent to the Procurement Representative (PR), and approved prior to the performance of work under this Agreement that involves either the use of individuals in TDPs or the use of individuals in SSPs.

- (3) **Drug Testing.** The WSAP document must provide for the following drug testing of individuals assigned to either a TDP or a SSP: random drug testing at the rates specified in 10 C.F.R. § 707.7; drug testing as a result of an occurrence as required by 10 C.F.R. § 707.9; and drug testing for reasonable suspicion of illegal drug use as required by 10 C.F.R. § 707.10.
- (4) **Breath Alcohol Testing (BAT).** When an individual assigned to a TDP or a SSP is drug tested under the above Paragraph 3, the WSAP document must also require the individual be administered an alcohol test. Alcohol testing will be conducted, and results will be determined, in accordance with 49 C.F.R. Part 40. The alcohol test described herein is not to be interpreted as a Department of Transportation (DOT) alcohol test performed on a DOT-regulated employee, as defined by the DOT agency regulations.

**Note:** For purposes of clarity, the initial sample may be collected through the use of a saliva screening test. If the result of the screening test is positive, a confirmation test must be performed using an evidential-grade breath alcohol device listed on the National Highway Traffic Safety Administration “Conforming Products List of Evidential Breath Measurement Devices.” A current list of approved devices can be found at <https://www.transportation.gov/odapc/approved-evidential-breath-testing-devices>. A BAT of 0.02 g/210L or above is considered a positive test.

(5) **Reporting Requirements.**

- a. Seller must provide Company a list of TDPs and SSPs, and the names and badge numbers of the individuals that are assigned to the positions. Seller must submit an updated list of TDPs and SSPs, along with assigned individuals, to Company’s STR, with copies to the PR, within 48 hours of a change to either the TDPs or SSPs, or the individuals assigned to the position.
- b. Seller must notify Company’s STR in writing, with copies to the PR, of a drug or alcohol related arrest or conviction as soon as possible, or at the latest within five calendar days, of arrest or conviction of an individual assigned to a TDP or SSP under the WSAPs for this Agreement.
- c. Seller must submit a written biannual WSAP report to Company’s STR, with copies to the PR, on January 15 and July 15 of each year. The January report must cover the period of July 1 to December 31. The July report must cover the period of January 1 to June 30. The biannual WSAP report must reflect all WSAP activity for the period that will enable Company to monitor the program in compliance 10 C.F.R. Part 707 and report to DOE, NNSA as appropriate.

Such WSAP activity includes, but is not limited to, training, drug testing activity (including drug tests completed before mobilization or commencing authorized work), and test results and any cases giving rise to a drug or security concern.

- (6) **Removal of Seller Employee.** Company will require Seller to remove individuals assigned to a TDP or a SSP under this Agreement who have violated the WSAP.

### **D. COMPANY TESTING POOL.**

Company has sole discretion as to whether or not Seller may participate in the Company's WSAP. Participation in Company's WSAP requires the written approval of Company; provided however, individuals with Human Reliability Program certification that perform work under this Agreement will be assigned to the CNS HRP test pool. Any individual assigned to a Company test pool must follow the criteria of the assigned test pool.

### **E. MATERIAL BREACH.**

Seller's failure to comply with the requirements of 10 C.F.R. Part 707 or to perform in a manner consistent with its approved WSAP may render Seller subject to suspension of payments, termination for default, suspension and debarment, and any other remedies available to Company or DOE, NNSA.

### **F. FLOWDOWN.**

Requirements of this Article, must be flowed down to applicable lower-tier subcontractors. Seller may either (i) include employees of some or all lower-tier subcontractors in its WSAP, or (ii) flowdown the requirements of this Article to applicable lower-tier subcontractor agreements. If Seller proceeds under option (ii) of this paragraph, then Seller must also submit the lower-tier subcontractor WSAP for approval by Company no later than 10 calendar days before Seller awards that lower-tier subcontract.