PART I - SECTION H

SPECIAL CONTRACT REQUIREMENTS

Part I - Section H

Special Contract Requirements

Table of Contents

Section	Provision	Page
H.0	Leadership and Stewardship of the Laboratory	1
H.0.1	Statement of Commitment	1
H.0.2	Strategic Objectives and Outcomes	2
H.0.3	Joint Management of Directives	4
H.1	Definitions	4
H.2	Reserved	4
H.3	Reserved	4
H.4	Contractor Assurance System	4
H.5	Application of DOE Directives and Alternatives	5
H.6	Reserved	7
H.7	Reserved	7
H.8	Technology Transfer Licensing Program	7
H.9	Third Party Rights	8
H.10	Option to Take Title to Facilities	8
H.11	Reserved	8
H.12	Privacy Act Systems of Records	8
H.13	Stop Work and Shutdown Authority	9
H.14	Reserved	9
H.15	Reserved	10
H.16	Labor Standards	10
H.17	Labor Relations; Strikes or Labor Stoppages	10
H.18	Reserved	10
H.19	Reserved	10
H.20	Subcontract Labor Law Application	10
H.21	Financial Management System	11
H.22	Reserved	12
H.23	Project Management System	12
H.24	Unallowability of Certain Costs	12
H.25	National Environmental Policy Act	13
H.26	Withdrawal of Work	13
H.27	Corporate Home Office Expenses	13
H.28	Provisional Payment of Fee/Unearned Fee	13

H.29 INL Site Stabilization Agreement and INEEL Site Construction Jurisdictional Procedural Agreement 14
H.30 Employee Separation 14
H.31 Reserved 14
H.32 Allocation of Responsibilities for Contractor Environmental Compliance Activities 14
H.33 Preservation of Cultural Resources, Wildlife, and Land Areas 16
H.34 Reserved 17
H.35 Small Business Subcontracting Plan 17
H.36 Legal Management Plan 17
H.37 Responsibility for Existing Contractual and Other Agreements 17
H.38 Reserved 17
H.39 Reserved 17
H.40 Business Unit 18
H.41 Performance Guarantee 18
H.42 Representations, Certifications, and Other Statements of the Offeror 18
H.43 Responsible Corporate Official 18
H.44 Conflicts of Interest Compliance Plan 18
H.45 Definitions of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification under Pub. Law. No. 85-804 19
H.46 Reserved 21
H.47 Implementation of ITER Agreement Annex on Information and Intellectual Property 21
H.48 Reserved 22
H.49 Employee Compensation: Pay and Benefits 22
H.50 Workers' Compensation Insurance 35
H.51 Reserved 36
H.52 Risk Management and Insurance Programs 36
H.53 Conference Management 39
H.54 Management and Operating Contractor Subcontract Reporting (Nov 2017) 41
H.55 Real Property Asset Management 41
H.56 Foreign Engagements – Technology Transfer Agreements/Memoranda of Understanding 44
H.57 Legal Defense and Reimbursement of Contractor Protective Force Officers 48
H.58 Agreements for Commercializing Technology 49
H.59 EPAct Data Protection 61
H.60 Quality Assurance Surveillance Plan 63
H.61 Contractor's Obligations Regarding Funding Opportunity Announcement DE-FOA-0003612 Genesis Mission (July 2026) 63

Part I - Section H

Special Contract Requirements

H.0 Leadership and Stewardship of the Laboratory

H.0.1 Statement of Commitment

The following principles provide a framework for the Office of Nuclear Energy's (NE) oversight of the Idaho National Laboratory (INL), which is informed by INL's Contractor Assurance System (CAS). The output of INL's CAS is tailored to the INL contract workscope and risks in a manner that provides NE insight so that its oversight activities can be appropriately adapted. NE and INL leadership are committed to excellence in mission execution through risk- and performance-based management oversight at all organizational levels, including federal contract oversight, federal/contractor-sponsored external assessment, and internal (Contractor) self-assessment. Excellence is achieved through partnerships founded on recognized value, mutual trust, organizational alignment and work quality, maximization of impact, management effectiveness and efficiency, and a commitment to continuous improvement. Our mutual integrated management oversight covers all aspects of contract execution and is based on the following:

(a) NE integrates and balances contract requirements and risk.

(b) Federal Contracting Officers authorize funding and workscope based on direction from program organizations.

(c) Following the receipt of program direction, the Federal Contracting Officers provide work authorization to the Laboratory.

(d) Designated program managers communicate and collaborate informally and routinely with the Laboratory.

(e) NE leverages INL's CAS in its oversight. The intensity of oversight is linked to oversight results, CAS effectiveness, and other metrics. This approach is applied to all business areas including operations, administration, finance, and programs.

(f) NE and the INL work jointly to identify, reduce, or streamline transactions to allow greater focus on mission performance.

(g) INL meets mission objectives and integrates programmatic efforts with safety, security, and quality requirements; its leaders balance DOE and Strategic Partnership work against risks or concerns associated with operations and cross-cutting functions.

(h) INL identifies, eliminates, and/or redesigns non-value added requirements and work flows to improve programs and functions' effectiveness.

(i) NE takes contract action to avoid, eliminate, or redesign non-value added requirements.

(j) NE oversight is strategic and focused on results and oversight topics, and priorities are commensurate with risk.

(k) Authority is delegated to the lowest level, and flexibility is encouraged in the execution of work.

(l) Trust, accountability, transparency, integrity and respect are maintained through all organizational levels, through increased communication and integration.

H.0.2 Strategic Objectives and Outcomes

The Parties' (DOE and the Contractor) fundamental expectation and intent is to deliver science and technology with strategic impact while performing work in a safe, secure, effective, efficient, transparent, and accountable manner. Long-term strategic and program goals and objectives are established in the Annual Laboratory Plan with annual Notable Outcomes established in the Performance Evaluation and Measurement Plan (PEMP). As the lead laboratory for the Office of Nuclear Energy, the Contractor shall utilize a corporate approach to managing programs by integrating with other DOE laboratories and shall:

(a) Achieve a positive impact on NE's strategic objective to revive, revitalize, and expand nuclear energy to ensure the reliability and resiliency of baseload power in meeting the Nation's energy needs by:

(1) Advancing research and development of nuclear energy systems through private/public partnerships.

(2) Establishing and demonstrating the INL as a national test bed for research, development, and demonstration of advanced nuclear energy systems including Small Modular Reactors (SMRs).

(3) Progressing to reduce the time and costs associated with development and qualification of nuclear materials and fuels.

(4) Establishing a case for a new versatile advanced (fast) test reactor.

(5) Providing NE with technical support for the safe and secure storage, transportation, treatment, and/or disposition of existing inventory of civilian and defense Spent Nuclear Fuels (SNF) and High-Level Radioactive Waste (HLW).

(6) Achieving consistent high-levels of operational performance including increased availability and evaluating the long-term viability of the Advanced Test Reactor (ATR) by January 2022.

(7) Developing and executing Transient Reactor Experiment and Test Facility (TREAT) experimental and testing program to maximize utilization.

(8) Leveraging the INL's fuel cycle facilities, materials, and expertise to further U.S. nonproliferation objectives.

(b) Establish the INL as an enduring control systems cybersecurity innovation capability for the Nation by:

(1) Addressing the most critical control systems challenges that require a national collaborative, and multidisciplinary teaming environment.

(2) Developing and executing a strategy to accelerate cyber talent pipelines with universities, industry agencies, and other collaborators.

(3) Advancing energy infrastructure for both cyber and physical resiliency with DOE laboratory and industry partners.

(4) Developing and advancing national defense security solutions to cyber threats in critical infrastructure and embedded systems in military platforms.

(c) Transform and integrate advanced manufacturing capabilities for extreme environment applications by:

(1) Establishing a manufacturing demonstration with focus on application of advanced manufacturing techniques for energy systems components working in extreme environments.

(2) Designing, demonstrating, training, and developing workforce on manufacturing techniques for nuclear fuels and nuclear reactor components.

(3) Advancing and designing embedded sensors and associated instrumentation to increase plant reliability and efficiency.

(d) Demonstrate the viability of integrated energy systems by:

(1) Demonstrating the viability of integrated energy systems in the electricity sector, where flexibility is achieved by production of multiple energy products via thermal and electrical integration.

(2) Advancing collaborations comprised of universities, national laboratories, and private research facilities to demonstrate integrated energy systems.

(3) Developing and demonstrating scalable processes to maximize the value of the energy derived from nuclear, renewable, and fossil energy resources, with a focus on effective and efficient utilization of limited natural resources and minimization of waste streams.

(4) Accelerating integration of transportation and energy storage system solutions.

H.0.3 Joint Management of Directives

The Contractor shall work closely with DOE to implement a Joint Directives Review Board (JDRB) to oversee and implement contract reforms, which are essential to strengthening the effectiveness of the INL to better serve the needs of the Nation. The JDRB will review contract requirements (proposed and modified) to assure greater authority and accountability for those closest to and best-informed about the work; application of existing national standards, where appropriate; consideration of equivalencies in accordance with clause H.5 of this section, where appropriate; elimination of burdensome requirements; and identification and elimination of contractual redundancies and inconsistencies. All determinations and evaluations of the JDRB will consider the risk of the work performed at the INL and the impact on the mission, accountability, public safety, and stewardship of assets. In implementing new or modified requirements, the JDRB shall ensure that mission essential functions are not compromised.

H.1 Definitions

"The United States Department of Energy (DOE)" means the same as "United States (U.S.)," "the Government," and "Idaho Operations Office."

"The Idaho National Laboratory (INL) Contractor" and "the Contractor" means Battelle Energy Alliance, LLC.

"The Idaho Cleanup Project (ICP) Contractor" means Idaho Environmental Coalition, LLC.

H.2 Reserved

H.3 Reserved

H.4 Contractor Assurance System

(a) The Contractor shall develop a Contractor Assurance System (CAS) that is approved and monitored by Contractor Senior Management and by the Contractor's Board of Directors or similar body established to provide oversight of the Contractor. This CAS, at a minimum, shall have the following key attributes:

(1) A comprehensive description of the CAS with risks, key activities, and accountabilities clearly identified.

(2) The CAS will be utilized to judge the effectiveness of mission areas, business, operational, and safety management system(s).

(3) A method for validating processes. Third party audits, peer reviews, independent assessments and external certification may be used in validating the CAS, but these methods do not replace internal assurance systems.

(4) Rigorous, risk–based, credible self-assessments, feedback, and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve its work process and to carry out independent risk and vulnerability studies.

(5) Metrics and targets intended to identify performance/compliance trends. The metrics should be developed with the following attributes:

(i) Benchmarking of key functional areas with other DOE contractors, industry, and research institutions.

(ii) Identifying changes that would result in efficient and cost-effective performance.

(iii) Allowing for correction of negative performance prior to serious negative impact to financial, operational, or mission goals.

(6) Processes to gather worker feedback to identify areas for performance improvement, lessons learned, and input relative to operational and safety improvement efforts.

(7) A process for timely and appropriate communication to the Contracting Officer of assurance-related information.

(b) The Contracting Officer shall be notified of assurance system changes. The Government will adjust its oversight of this contract based on the results of an effective CAS.

H.5 Application of DOE Directives and Alternatives

(a) **Performance**. The Contractor shall perform the work of this contract in accordance with each of the DOE directives appended to this contract as Section J, Attachment G, until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.

(b) **Laws and Regulations Excepted**. This clause supplements the requirements in Section I, "*Laws, Regulations, And DOE Directives*," (DEAR 970.5204-2) for purposes of addressing alternatives to DOE directives. The process described in this clause does not affect the application of applicable laws and regulations.

(c) **Deviation Processes in Existing Orders.** This clause does not preclude the use of deviation processes provided for in existing DOE directives.

(d) **Proposal of Alternative**. The Contractor may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed directive by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized in performance under the contract, and a schedule for implementation of the alternate. The Contractor shall include an assurance that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the proposal.

(e) **Action of the Contracting Officer**. The Contracting Officer shall within sixty (60) calendar days:

(1) Deny application of the proposed alternative;

(2) Approve the proposed alternative, with conditions or revisions;

(3) Approve the proposed alternative; or

(4) Provide a date by which a decision shall be made (not to exceed an additional sixty (60) calendar days).

(f) **Implementation and Evaluation of Performance**. Upon approval in accordance with paragraph (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under paragraph (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. This statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. The Government shall evaluate the performance of the approved alternative from the Contractor's scheduled date for implementation.

(g) **Application of Additional or Modified Directives**. During the performance of the contract, the Contracting Officer may notify the Contractor that s/he intends to unilaterally add directives not then listed in Section J, Attachment G, entitled "*List of Applicable DOE Directives (List B),*" or make modifications to listed directives. Within thirty (30) calendar days of receipt of that notice, the Contractor may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted within the thirty (30) calendar-day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the directive or modification to Section J, Attachment G. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any

changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the directive or modification.

(h) **Deficiency and Remedial Action**. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, at his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the directive.

H.6 Reserved

H.7 Reserved

H.8 Technology Transfer Licensing Program

(a) **Licensing Program**. To assist in the commercialization and utilization of inventions and technologies developed under the contract, the Contractor shall establish a licensing program, whereby waived subject inventions and copyrighted software are moved in an expeditious manner into the commercial marketplace by means of appropriate licensing agreements. The licensing program will be administered consistently with the Contractor's contractually obligated technology transfer efforts and the other provisions of this contract.

The Contractor shall utilize the Laboratory's share of royalty revenues and other fees obtained pursuant to activities under this clause at the Laboratory consistent with paragraph (h) of the Section I clause entitled, "Technology Transfer Mission." The Contractor agrees to carry out licensing activities in accordance with the export control laws and regulations of the U.S.

(b) **Royalty Sharing with Inventors**. The Contractor shall establish, subject to the approval of the Contracting Officer, a policy for sharing of royalties with inventors.

Where the Contractor has a corporate policy for incentive awards including sharing royalties with inventors, or the Contractor is a subsidiary or affiliate and its parent corporation has an incentive and royalty sharing policy, the corporate sharing policy may be approved by the Contracting Officer for use at the INL.

Whenever any annual invention awards or annual royalty payments to an inventor exceed ten percent (10%) of the inventor's annual base salary, the Contractor shall:

(1) Identify the inventor to the Contracting Officer;

(2) Provide an accounting of time spent by the inventor on private consultations, Strategic Partnerships Programs (SPP) projects, and DOE mission work; and

(3) Provide a review of DOE mission work and ensure no conflicts or apparent conflicts of interest exist with respect to the inventor.

H.9 Third Party Rights

This contract is not enforceable by, or for the benefit of, and shall create no obligations to, any person or entity other than the Parties.

H.10 Option to Take Title to Facilities

If the Contractor and the Government agree that the Contractor retains title to a facility it builds during contract performance, the Government reserves an option to take title to the facility (including fixtures and other equipment used in the facility) if the Contractor does not complete contract performance for any reason. If this option is exercised, the Government shall, consistent with this contract and any supplemental agreements describing how facility construction costs will be shared, negotiate a fair settlement on reimbursement of unrecovered facility capital expenses.

H.11 Reserved

H.12 Privacy Act Systems of Records

The Contractor shall design, develop, and operate the following Systems of Records (SOR) on individuals to accomplish an agency function pursuant to the Section I clause entitled, "Privacy Act" (FAR 52.224-2).

DOE System Number	Title
DOE-05	Personnel Records of Former Contractor Employees (This SOR shall include the records of all former employees who previously worked for any predecessor Contractors at the INL)
DOE-10	Worker Advocacy Records
DOE-11	Emergency Operations Notifications Call List
DOE-15	Intelligence Related Access Authorization
DOE-28	General Training Records
DOE-31	Firearms Qualification Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records

DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-48	Security Education and/or Infraction Reports
DOE-50	Human Reliability Program Records
DOE-51	Employee and Visitor Access Control Records
DOE-52	Access Control Records of International Visits, Assignments and Employment
DOE-55	Freedom of Information and Privacy Act (FOIA/PA) Requests for Records
DOE-75	Call Detail Records
DOE-77	Physical Fitness Test Records
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records
DOE-88	Epidemiologic and Other Health Studies, Surveys and Surveillances

This list may be revised from time to time by written direction from the Contracting Officer. Direction from the Contracting Officer is effective immediately and satisfies the listing requirement contained in paragraph (a)(1) of the Section I clause entitled, "Privacy Act" (FAR 52.224-2).

H.13 Stop Work and Shutdown Authority

The Section F clause entitled, "Stop Work Order, Alternate I" (FAR 52.242-15), allows only the Contracting Officer to stop work or shutdown facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work where the Contractor's acts or failures to act cause substantial harm or present and imminent danger to the environment or health and safety of employees or the public, any DOE employee may exercise the stop work authority contemplated in the Section I clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution" (DEAR 970.5223-1).

H.14 Reserved

H.15 Reserved

H.16 Labor Standards

The Government shall determine the appropriate labor standards that apply to work activities in accordance with the Davis-Bacon Act or other applicable labor laws. When requested by the Government, the Contractor shall timely provide information necessary for the Government to make the determination. Once a determination is made, the Contractor is responsible for complying with the determination and incorporating appropriate labor standards requirements into subcontracts.

H.17 Labor Relations; Strikes or Labor Stoppages

(a) The Contractor shall respect the right of employees to self-organize and to form, join or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

(b) During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before submitting or agreeing to any collective bargaining proposal that can be calculated to affect allowable costs under this contract or that could involve other items of special interest to the Government.

(c) Consistent with applicable labor laws and regulations, the Contractor shall recognize and bargain in good faith with the *United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, International Union Workers (USW)*, Security Operations Specialists Association (SOSA), Amalgamated Transit Union (ATU), and International Association of Fire Fighters (IAFF) as the collective-bargaining representative of employees performing work that has historically and traditionally been performed and is covered in the scopes of these contracts, and negotiate collective bargaining agreements. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or retirement income plans or to any other welfare benefit plans.

(d) The Contractor shall promptly notify the Government of any planned or actual strike or work stoppage involving its employees or employees of a subcontractor.

H.18 Reserved

H.19 Reserved

H.20 Subcontract Labor Law Application

(a) For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contractor shall follow those

provisions, requirements and stipulations required by the Act.

(b) For all subcontracts, the principal purpose of which is to furnish services through the use of service employees, in excess of $2,500.00, and which are subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the Contractor shall follow those provisions, requirements and stipulations required by the Act.

(c) For subcontracts relating to construction, refer to the clause in Section I entitled, "Government Facility Subcontract Approval" (DEAR 970.5236-1).

H.21 Financial Management System

(a) In addition to those clauses listed elsewhere in this contract, the Contractor shall operate and maintain a timely, useful, and reliable financial management system that:

(1) Complies with laws, regulations, and DOE directives/financial reporting requirements, including prescribed accounting formats.

(2) Conforms to the U.S. Government Standard General Ledger (SGL), Generally Accepted Accounting Principles, Federal Financial Accounting Standards and Cost Accounting Standards, except as modified by this contract.

(3) Integrates and reports the financial information for subcontractors.

(4) Plans, develops, monitors, and reports indirect costs by major work activity/service area as concurred by DOE. Provides financial analysis capabilities sufficient to model indirect cost rates for planning purposes (budget submissions) and execution year actual rates with minimal changes that impact program performance and fiscal effectiveness (Impact statements shall be prepared for all proposed rate changes impacting the programs).

(5) Allows for the DOE Idaho Operations Office read-only electronic access to accounting records and other pertinent systems and databases.

(6) Employs charging practices, policies, and procedures to collect and report forecasted and incurred cost. This proposed work breakdown structure, chart of accounts, charging practices, and policies shall be approved by the Government before implementation. Changes to charging practices, including cost accounting changes or any other change affecting historical records of projects, requires Contracting Officer determination of adequacy of the contractor's disclosure statement.

(7) Assures funding as provided in the Financial Plan is directly aligned to Task Plan activities within the approved baselines (funds will not be provided until the baselines are approved by the DOE Idaho Operations Office).

(8) Supports periodic requests, to provide detailed cost element information at the institutional level using standard definitions and applications.

(b) These systems shall be compliant with the above standards. These systems include general electronic data processing, budget and planning, purchasing, material, compensation, labor/payroll, indirect and other direct cost(s), billing, and estimating. Guiding principles for financial management shall be followed.

H.22 Reserved

H.23 Project Management System

The Contractor shall provide a Project Management System that delivers the policies, procedures, and tools that assist INL project managers in completing projects on time and within budget. The system will be applied to all projects using a graded approach based upon the nature, complexity, risk, size, and sensitivity of the work being performed. Attributes of the system will include the following:

(a) Definition and organization of the workscope;

(b) Planning, scheduling, and cost estimating;

(c) Work authorization;

(d) Performance assessment;

(e) Change management;

(f) Reporting;

(g) Closeout.

H.24 Unallowability of Certain Costs

(a) The following categories of costs are expressly unallowable:

(1) The cost of unauthorized or improper purchases made by Contractor employees. Unauthorized or improper purchases are those that are not authorized by the clause in Section I entitled, "Contractor Purchasing System" (DEAR 970.5244-1), or the written direction of the Contracting Officer.

(2) Cost overruns where applicable change control or funds processes at DOE control points established in accordance with the approval attributes listed above in clause H.23, "Project Management System," were not followed or the Contractor did not obtain prior approval from the Contracting Officer.

(b) Costs made unallowable under this clause shall be subject to the penalty described in Section I, clause I.52 entitled, "Penalties for Unallowable Costs" (DEAR 970.5242-1), if the Contractor includes those costs in a submission for settlement of cost incurred.

(c) FAR Subpart 31.2, "Contracts with Commercial Organizations," shall determine the allowability of all other costs not addressed by this or other clauses.

(d) This provision does not affect DOE's rights under other provisions of the contract.

H.25 National Environmental Policy Act

The Contractor shall, early in the planning stage of any proposed activity that may trigger agency compliance with the National Environmental Policy Act (NEPA), inform DOE in writing of the potential environmental impacts, including any cumulative impacts from other proposed or ongoing activities. The proposed activity may not proceed until all NEPA requirements have been satisfied. DOE NEPA implementing procedures are published at 10 CFR part 1021.

The Contractor shall implement all requirements, conditions and mitigation measures included in any applicable NEPA decision document, or categorical exclusion upon which a NEPA determination is based.

H.26 Withdrawal of Work

(a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, "*Description/Specifications/Statement of Work*," of the contract performed by either another contractor or to have the work performed by the Government employees.

(b) Work may be withdrawn (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Contractor; or (4) for any other reason deemed by the Contracting Officer to be in the best interest of the Government.

(c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity, if applicable, and to provide whatever support is required.

H.27 Corporate Home Office Expenses

No corporate home office expenses of the Contractor are allowable under this contract without the prior approval of the Contracting Officer.

H.28 Provisional Payment of Fee/Unearned Fee

(a) The Contractor is authorized to receive a monthly provisional fee payment, not to exceed a total of seventy-five percent (75%) of the feel pool established in Section B.2, Table B-1, in accordance with the Section I clause entitled, "Payments and Advances, Alternate II, Alternate III" (DEAR 970.5232-2).

(b) Except as allowed in the Section I clause entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount, Alternate I, Alternate IV" (DEAR 970.5215-1),

or as may be expressly stated within the text of a specific fee incentive, unearned fee cannot be carried over or used to fund other incentive arrangements of this contract.

H.29 INL Site Stabilization Agreement and INEEL Site Construction Jurisdictional Procedural Agreement

The Contractor and subcontractor at all tiers shall become signatory to the INL Site Stabilization Agreement (SSA) and the INEEL Site Construction Jurisdictional Procedural Agreement (SJA). Copies of both agreements are contained in Section J, Attachment M, "*Other Site Agreements*." The SSA applies to Davis-Bacon Act construction performed within the geographic confines of the INL. The SJA applies to construction performed under the contract with the DOE Idaho Operations Office.

H.30 Employee Separation

Employee separations shall be consistent with approved Work Force Restructuring Plans for the INL and with DOE policy.

H.31 Reserved

H.32 Allocation of Responsibilities for Contractor Environmental Compliance Activities

This clause allocates the responsibilities of the Government and the Contractor, referred to collectively as "the Parties," for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term "environmental requirements" means requirements imposed by applicable federal, state, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.

(a) Purpose and Scope.

The central purpose of this section is to implement the intent of the Parties that liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements be borne by the Party that caused the violation. This clause resolves liability for fines and penalties through the cognizant regulatory authority may assess such fine or penalty under either Party or both Parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which Party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

(b) Enforcement Actions and Liability for Fines and Penalties.

Regardless of which Party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of

this clause and other clauses related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is the Contractor, the Contractor may seek reimbursement from the Government; and the Government shall determine whether the cost of the fine or penalty is reimbursable pursuant to the provisions of this contract and reimburse the Contractor when appropriate. If the named subject of an enforcement action or assessment of a fine or penalty is the Government and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor shall either pay the fine or penalty or reimburse the Government (if it pays the fine or penalty).

(c) Signature of Permit Applications and other Regulatory Documents.

(1) Consistent with the Section I clause entitled, "Laws, Regulations and DOE Directives" (DEAR 970.5204-2), the Contractor shall obtain any licenses, permits, other approvals or authorizations for conducting activities at the INL. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations, and approvals from federal, state and local regulatory agencies that are necessary for operations under this contract (hereinafter referred to collectively as "permits"). Except as specifically provided in the section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) shall be the sole applicant for any such permits required for its activities. The Contractor shall take all appropriate actions to obtain transfer of existing permits, and the Government shall use all reasonable means to facilitate the transfer of existing permits. If the Government determines it is appropriate or if the Government is required by cognizant regulatory authority to sign permit applications, the Government may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting their responsibility under the permit unless the Government waives this requirement in writing.

(2) The Contractor shall submit to the Government for review all agreed upon permit applications, reports, or other documents required to be submitted to the cognizant regulatory authorities. Such draft documents or briefings shall be provided to the Government, within a timeframe identified by the Government. When providing the Government with documents that are to be signed or co-signed by the Government, the Contractor shall accompany such document with a certification statement, signed by the appropriate company officer or designated senior leadership team delegate attesting to the Government that the document has been prepared in accordance with all applicable requirements and the information is, to the best of their knowledge and belief, true, accurate and complete.

(3) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) shall be the signatory for reports, hazardous waste manifests, and

other similar documents required under environmental permits or applicable environmental laws and regulations.

(d) The Contractor shall maintain clear lines of authority and accountability regarding compliance with environmental requirements. At minimum, the Contractor shall have a single point of accountability at the site-area level (e.g., Advanced Test Reactor Complex, Materials and Fuels Complex, Special Manufacturing Complex, Central Facilities Area and Research Education Campus) for all activities at those facilities. The Contractor may further delegate responsibility for individual buildings, permitted facilities, or similar discrete units provided there is adherence to the principle point of accountability.

H.33 Preservation of Cultural Resources, Wildlife, and Land Areas

(a) The Contractor shall ensure compliance with the Archaeological Resources Protection Act (ARPA) by prohibiting the unauthorized excavation, removal, damage, alteration, or defacement of cultural resources on INL Site lands. DOE-ID prohibits the unauthorized disturbance or removal of cultural resources from the INL Site by any person, whether or not affiliated with DOE, including INL Site contractors who may have authorized access to the INL Site for any mission-related purpose. This does not include cultural resources obtained or disturbed under DOE authorization for Native American ceremonial use, to fulfill regulatory compliance requirements, or for approved investigations and studies. Cultural resources can consist of, but are not limited to, bones, stone tools, projectile points, obsidian and other volcanic glass, arrow shafts, beads, pottery sherds, glass bottles, tin cans, leather, ceramics, and domestic items such as shell buttons and kitchen utensils. The Contractor will ensure work is ceased and notification is made in accordance with inadvertent or late discovery requirements in the event that cultural resources are discovered during work under this Contract.

(b) The Contractor shall exercise reasonable care in the preservation of native vegetation. If vegetation must be removed for programmatic, survey, or construction purposes, the disturbed soil shall be revegetated or stabilized, as appropriate to discourage establishment of non-native vegetation. The Contractor will maintain a tracking method of the disturbed and revegetated areas, revegetate disturbed areas with native species, plant/restore sage brush for large disturbances, and prepare an annual report for DOE. In addition, the Contractor shall maintain an effective invasive plant species management program.

(c) The Contractor shall exercise reasonable care in the protection of wildlife on the INL site.

(d) The Contractor shall implement the “Candidate Conservation Agreement for Greater Sage-Grouse on the Idaho National Laboratory Site” developed cooperatively by the U.S. DOE Idaho Operations Office and the U.S. Fish and Wildlife Service, September 2014. The Contractor shall consult with DOE-ID on any sage-grouse related issue and has the responsibility for implementing all actions required by the conservation measures, compliance, and reporting requirements.

(e) The Contractor shall prohibit the unauthorized collection of natural resources from INL Site lands. DOE-ID prohibits the unauthorized removal of natural resources from the INL Site by any person, whether or not affiliated with DOE, including INL Site contractors who may have authorized access to the INL Site for any mission-related purpose. Natural resources can consist of, but are not limited to, wildlife, antlers, rocks, minerals, wood, plants, seeds, flowers, feathers, bones, teeth, insects, nests, and snake skins. This does not include the DOE authorized collection or removal of natural resources such as environmental media or samples for scientific or monitoring related purposes or the authorized extraction of natural resources. Additionally, this does not apply to the salvage of animals, provided Idaho Department of Fish and Game (IDFG) requirements for salvage are met, that are a result of vehicle collisions on public rights-of-way (e.g., Hwy 20) by persons using personal time and in personal vehicles; or the lawful harvest of elk or pronghorn within defined hunting areas and seasons, provided the proper permits are obtained from the IDFG. Hunting of all other species on the INL land is prohibited.

H.34 Reserved

H.35 Small Business Subcontracting Plan

The Small Business Subcontracting Plan submitted and approved by the Contracting Officer at the time of contract award is incorporated into this contract as Section J, Attachment J. Required annual plans and any revisions to plans shall be approved by the Contracting Officer and incorporated in the contract by a separate contract modification. Plans shall provide consideration for local and Idaho businesses.

H.36 Legal Management Plan

(a) The Contractor shall submit a Legal Management Plan in accordance with 10 CFR part 719, "Contractor Legal Management Requirements," and include the items set forth in 10 CFR part 719.10, to the Contracting Officer for approval within sixty (60) calendar days of the contract award date.

(b) The Plan shall describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. Once approved by the Contracting Officer, the Plan, as well as applicable regulations and contract provisions form the basis for approvals by the Contracting Officer to reimburse litigation and other legal expenses. The Plan may be revised from time to time to conform to legal management rules or policies established by DOE.

H.37 Responsibility for Existing Contractual and Other Agreements

The Contractor shall accept transfer of and assume responsibility and accountability for assignment of existing commercial and regulatory obligations of incumbent contractors.

H.38 Reserved

H.39 Reserved

H.40 Business Unit

The work performed under this contract shall be conducted by a separate business unit (separate corporation, division, segment, joint venture, etc.) that shall be totally responsible for all contract activities and shall present one face to the Government.

H.41 Performance Guarantee

If the Contractor is an entity that has been solely created for the purpose of performing this contract, the Performance Guarantee contained in Section L, Appendix 6 must be signed and is incorporated into this contract in Section J, Attachment C. Where this requirement applies, the Performance Guarantee must be signed by all parent companies, members, partners, or other similar parent entities that have ownership or management rights over the Contractor. Each entity that signs a Performance Guarantee assumes joint and several liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.42 Representations, Certifications, and Other Statements of the Offeror

The Representations, Certifications, and Other Statements of the Offeror submitted with the Contractor's offer for this contract are, be reference, incorporated in and made a part of this contract.

H.43 Responsible Corporate Official

The Government may contact, as necessary, the single responsible official identified below (who is at a level above the Contractor). The official is accountable for the Contractor's performance and the person the Government will look to on performance issues. Should the responsible official change during the contract, the Contractor shall promptly notify the Government of the change.

Juan Alvarez
Executive Vice President
National Laboratory Management and Operations
505 King Avenue
Columbus, OH 43201
Office: (614) 424-5200
Mobile: (208) 520-5051
Fax: (614) 458-5200
Email: alvarezj@battelle.org

H.44 Conflicts of Interest Compliance Plan

The Contractor shall maintain a Conflicts of Interest (COI) Compliance Plan. The Plan shall address the Contractor's approach for adhering to the contract provision clause I.09 entitled, "Organizational Conflicts of Interest, Alternate I" (DEAR 952.209-72), and describe its

procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The overall purpose of the Plan is to demonstrate how the Contractor will assure that its operations meet the highest standards of ethical conduct, and how its assistance and advice are impartial and objective. The Plan shall specifically address:

(a) How COI issues will be identified and mitigated during contract performance;

(b) How the Contractor will ensure its workforce is aware of and complies with COI requirements;

(c) How the Contractor will ensure that the activities of parent and affiliated companies are consistent with its Plan.

(d) How the Contractor will protect confidential, proprietary or sensitive information.

H.45 Definitions of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification under Pub. Law. No. 85-804

(a) The term "a risk defined in this contract as unusually hazardous or nuclear" as used in the Section I clause entitled, "Indemnification Under Public Law 85-804" (FAR 52.250-1), means the risk of legal liability to third parties (including legal costs as defined in paragraph jj of Section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2014 jj, notwithstanding the fact that the claim or suit may not arise under Section 170 of said Act) arising from actions or inactions in the course of the following performed by the Contractor under this contract:

(1) Assistance in the redesign of research and test reactors outside the United States under the Reduced Enrichment for Research and Test Reactors (RERTR) program (including but not limited to that performed pursuant to the contract between the University of Chicago and the Russian Research and Development Institute of Power Engineering (RRDIPE), dated January 17, 1995, and any extension thereto), so that the reactors can use low rather than high-enriched uranium and thus reduce the potential for the loss or diversion of high-enriched uranium.

(2) Assistance in nuclear materials protection, control and accounting (MPC&A) technical support to the DOE with respect to nonproliferation activities involving nuclear material outside the United States, such as establishing safeguard systems to prevent diversion of nuclear material or preventing the unauthorized import or export of nuclear material, including but not limited to:

(i) DOE's MPC&A activities in Ukraine under the Agreement between the Department of Defense of the United States of America and the Ukraine State Committee on Nuclear and Radiation Safety Concerning Development of State Systems of Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine, dated December 18, 1993, and any extension thereto;

(ii) DOE's MPC&A activities in Belarus under the Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, dated June 23, 1995, and any extension thereto;

(iii) DOE's MPC&A activities in Kazakhstan under the Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, dated December 13, 1993, and any extension thereto;

(iv) DOE's MPC&A activities in Russia under the Agreement between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning Control, Accounting and Physical Protection of Nuclear Material, dated September 2, 1993, and any extension thereto; and

(v) DOE's MPC&A activities in the Baltic States of Latvia and Lithuania and in Uzbekistan under the Coordinated Technical Support Plans (CTSP), and any extension thereto for the states of the former Soviet Union as supported by the member states of the Atomic Energy Agency.

(3) Assistance in the DOE's activities under the Russian Research Reactor Fuel Return (RRRFR) Program to repatriate Russian-origin highly-enriched uranium (HEU) nuclear materials from research reactors outside the United States, such as assistance with project planning and management, technical support, and contracting for the preparation, loading, and transportation of HEU nuclear materials and spent nuclear fuel from countries outside the United States to the Russian Federation, and the processing, conditioning, and storage of HEU nuclear materials, spent nuclear fuel, and associated waste streams within the Russian Federation.

(4) Participation in tasks or activities by the Contractor or its subcontractors on or after March 11, 2011 that is directed or authorized by the U.S. DOE or the U.S. DOE National Nuclear Security Administration as an element of activities taken in response to the Japanese earthquake and tsunami, including efforts to address and assess damage to nuclear power plants and potential radioactive releases from these plants now and in the future.

(5) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary for Nuclear Security, non-proliferation, emergency response, antiterrorism, and similar critical national security activities involving the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging,

transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological or explosive materials, facilities, and/or devices; provided that the activity relates to materials that are weapons usable or otherwise have the potential for mass destruction and further provided that the request or approval specifically makes the indemnity provided by this clause applicable to that particular activity.

(6) Participation in tasks or activities by the Contractor or its subcontractors on or after March 13, 2020, through June 30, 2020, that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration, including work for others, as an element of activities taken now and through June 30, 2020, in response to COVID-19, including but not limited to efforts to test for the presence of COVID-19, to provide equipment and resources to address COVID-19, and to develop treatments and vaccines for COVID-19, to the extent the task or activity is not exempt from liability under the Public Readiness and Emergency Preparedness Act (PREP Act) or other law, or the exemption under the PREP Act or other law is limited in scope or amount which is not sufficient to provide complete protection against the liability to which the contractor is exposed.

(b) The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price Anderson Act, Section 170d of the Atomic Energy Act , as amended (42 U.S.C. Section 2210d), or where the indemnification provided by the Price Anderson Act is limited by the restriction on public liability imposed by Section 170e of the Atomic Energy Act , as amended (42 U.S.C. Section 2210e), to an amount which is not sufficient to provide complete indemnification for the legal liability to which the Contractor is exposed.

(c) For purpose of this section H.45, the term "Contractor" means:

(1) Battelle Energy Alliance, LLC (BEA)

(2) BEA's Member Company: Battelle Memorial Institute, Inc.

(3) BEA's Teaming Subcontractors: BWX Technologies, Inc. and Amentum Environment & Energy, Inc.

H.46 Reserved

H.47 Implementation of ITER Agreement Annex on Information and Intellectual Property

(a) The Contractor agrees to be subject to the Agreement on the establishment of the International Thermonuclear Experimental Reactor (ITER) International Fusion Energy Organizational for the joint implementation of the ITER Project (the ITER Agreement). Specifically, and without limitation, subject inventions and data produced in the performance of this contract and subcontracts related to the ITER Project are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property (the Annex) attached under Section J, Attachment S, "*List of Documents, Exhibits and Other Attachments*," of this contract.

(b) Background Intellectual Property of the Contractor, as defined in the Annex, is also subject to the provisions of the ITER Agreement. In particular, and under certain circumstances, the Contractor shall use its best efforts to identify Background Intellectual Property (including patents and data) and grant a nonexclusive license in certain Background Intellectual Property to the Parties to the ITER Agreement (Members) for commercial fusion use. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE.

(c) Further, in accordance with Annex, intellectual property generated by Contractor employees, who are designated as seconded staff to the ITER Organization, shall be owned by the ITER Organization; and the Contractor gets no rights to such intellectual property except those rights provided to the Contractor by the Government as a result of the Government being a member of the ITER Organization. The Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate secondment agreement with the ITER Organization.

(d) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract. The Contractor will deliver, at a minimum, to DOE, copies of all ITER-related peer-reviewed manuscripts provided to scientific and technical journal publishers, which may then be distributed to Members in accordance with the ITER Agreement. The Contractor agrees that the ITER Organization may impose a different delivery requirement to be in compliance with this paragraph and that, if so, the Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.

(e) The Contractor shall include the ITER patent and data rights clauses transmitted to the Contractor from the U.S. ITER Project Office, suitably modified to identify the Parties, in all subcontracts related to ITER, at any tier, for experimental, developmental, demonstration, or research work, and in subcontracts in which technical data or computer software is expected to be produced or in subcontracts that contain a requirement for production or delivery of data.

H.48 Reserved

H.49 Employee Compensation: Pay and Benefits

(a) Contractor Employee Compensation Plan

1. The Contractor shall submit, for Contracting Officer approval, by a Contractor Employee Compensation Plan (to be submitted during contract transition only) demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and

retention of a highly skilled, motivated, and experienced workforce.

2. A description of the Contractor Employee Compensation Program should include the following components;
   a. Philosophy and strategy for all pay delivery programs.
   b. System for establishing a job-worthy worth hierarchy.
   c. Method for relating internal job worth hierarchy to external market.
   d. System that links individual and/or group performance to compensation decisions.
   e. Method for planning and monitoring the expenditure of funds.
   f. Method for ensuring compliance with applicable laws and regulations.
   g. System for communicating the programs to employees.
   h. System for internal controls and self-assessment.
   i. System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102- 05-6; "Compensation for Personal Services." DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

(c) Reports and Information

(1) The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:
   a. An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts; and planned distribution of funds for the following year.
   b. A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(1)(i) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation no later than March 1st of each year.
   c. Section 702 of the Bipartisan Budget Act of 2013 (BBA; Pub. L. 113 - 67, December 26, 2013) establishes a cap on the reimbursement of compensation costs for contractor employees, adjusted annually to reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics (BLS), unless grandfathered under Section 702 part (c)

"Applicability".

d. An Annual Compensation and Benefits Report no later than March 15th of each year.

(d) Pay and Benefits Programs

(1) The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

Incumbent Employees are the employees who hold regular appointments or who are regular employees of the incumbent Contractor.
Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by (fill-in name of the incumbent Contractor) for at least the first year of the term of the Contract.
Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by the prior contractor. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.
Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.
Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(2) Cash Compensation

a. The Contractor shall submit the below information, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
    i. Any proposed major compensation program design changes prior to implementation.
    ii. Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.
    iii. In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:
        1. The Promotion/Adjustment fund, in addition to the Merit fund, does not exceed the Department guidance providing the WorldatWork projected overall base-building increases for the

CIP year. (fill-in) percent in total.

2. The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
3. Salary structure adjustments do not exceed the mean World at Work structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
4. Note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allowability will exist for employee job classes that exceed market position.

b. If a Contractor does not meet the criteria included in (a)(iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability unless the Contracting Officer, in accordance with subparagraph (o) obtains an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or an independent public accounting firm under the DOE contract for such services. Otherwise, the CIP should include the following components and data:
   i. Comparison of average pay to market average pay.
   ii. Information regarding surveys used for comparison.
   iii. Aging factors used for escalating survey data and supporting information.
   iv. Projection of escalation in the market and supporting information.
   v. Information to support proposed structure adjustments, if any.
   vi. Analysis to support special adjustments.
   vii. Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movements. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) all pay actions granted under the CIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) the Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
   viii. A discussion of the impact of budget and business constraints on the CIP amount.
   ix. Comparison of pay to relevant factors other than market average pay.
   x. After receiving DOE CIP approval or if criteria in (d)(2)(i)(C) was met, Contractors may make minor shifts up to ten percent (10%) of approved CIP funds by employment category (scientist/engineer, administrative, exempt, nonexempt, etc.) without obtaining DOE approval.

Individual compensation actions for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel are not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).

c. The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (d)(3)(A)(vi) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable base salary reimbursement under the contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

d. Severance Pay is not payable to an employee under this Contract if the employee:
   i. Voluntarily separates, resigns or retires from employment;
   ii. Is offered employment with a successor/replacement Contractor;
   iii. Is offered employment with a parent or affiliated company;
   iv. Is discharged for cause; or
   v. Is a key person identified in Section J, Attachment D, "List of Key Personnel."

e. Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(e) Pension and Other Benefit Programs

1. No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval benefit changes that result in increases to the Department's long-term pension and other actuarial liabilities that are reported in the Department's financial statement and increases in other benefits such as paid time off, insurance and employer contributions for defined contribution pension plans. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions. Any changes made by the Contractor shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

2. Shared costs are allocated among Plan Sponsors according to their proportionate share of the total participant headcount (including active, deferred, and retiree participants), rounded to the nearest whole percentage. This allocation is determined annually on October 1 and reported by the Plan Actuary. Plan Sponsors will be required to make contributions as determined by IRS rules.

3. The "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below, are methodologies designed to assist the Contracting Officer in contract administration and oversight. As an alternative to the Employee Benefits Cost Survey Comparison, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or from DOE's independent public accounting firm (under contract with DOE), in accordance with subparagraph (n) to assist in determining whether costs are reasonable, allowable, allocable, and in accordance with the terms of the contract.

4. Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.
    i. The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to employees measured against the RV of benefit programs offered by the Contracting Officer approved comparator companies. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,
    ii. An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey. Alternatively, in accordance with subparagraph (n) the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE), and not require the

submission of an Employee Benefits Cost Study.

5. When the net benefit value exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.

6. When the benefit costs as a percent of payroll exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.

7. Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan. The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.

8. Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

9. Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (g)(6) below for Pension Management Plan requirements).

10. Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

(f) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

1. Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.

2. Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a

DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to Separate Plans at the time of new contract award or the extension of a contract.

(g) Basic Requirements

1. The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.
    i. The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
    ii. Each Contractor Defined Benefit and Defined Contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA Section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA Section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA Section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA Section 104.

    While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.
    iii. For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate plan.
    iv. For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
    v. The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
    vi. The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension

plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

(h) Reimbursement of Contractors for Contributions to Defined Benefit (DB) Pension Plans

1. Contractors that sponsor single employer or multiple-employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA,), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments.

2. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

3. Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer, and will be considered on a case-by-case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide

preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized, and it is known whether there are any budget issues with the proposed contribution amount.

(i) Reporting Requirements for Designated Contracts

1. The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:
    i. Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.
    ii. Forms 5500. Copies of IRS Forms 5500 with schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
    iii. Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin- off, or merger of a plan submitted to the IRS.

(j) Changes to Pension and PRB Plans

1. No presumption of allowability will exist when the Contractor makes changes to existing pension plans or PRB plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval changes that result in increases to the Department's long-term pension and PRB liabilities that are reported in the Department's financial statement. Examples of changes that increase the Department's long-term liabilities include defined benefit pension plan changes and PRB plan changes. At least sixty (60) days prior to the adoption of changes to a pension plan, the Contractor shall submit the information required below, to the Contracting Officer. The Contracting Officer must approve plan changes that increase costs that increase the Department's long-term liabilities as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

2. For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
    i. A copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout, an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
    ii. Except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal

requirements applicable to private sector defined benefit pension plans;
iii. The Summary Plan Description; and
iv. Any such additional information as requested by the Contracting Officer.

3. Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see (e)(1) above). The justification must:
   i. Demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs;
   ii. Provide the dollar estimate of savings or costs; and
   iii. Provide the basis of determining the estimated savings or costs.

(k) Post Contract Responsibilities for Pension and Other Benefit Plans

1. If this contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the INL (collectively, the "Plans"), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management, and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled Plan is involved, the Contractor shall:
   i. Spin-off the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the Commingled Plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.
   ii. Bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spin-off. DOE and the Contractor(s) shall establish an effective date of spin-off. On or before the same day as the Contractor notifies the IRS of the spun-off or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

2. If this contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for the purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of contract completion:

i. Subject to subparagraph (ii) below, and notwithstanding any legal obligations independent of the contract, the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

ii. The Parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management, and administration of the Plans prior to or at the time of contract completion. However, if the Parties have not reached agreement on the Contractor's responsibilities for sponsorship, management, and administration of the Plans prior to or at the time of contract completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable contract provisions.

(l) Terminating Operations

1. When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:
   i. No further benefits for service shall accrue.
   ii. The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
   iii. The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.
   iv. Assets shall be determined using the "accrual-basis market value" on the date of termination of operations.
   v. DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(m) Terminating Plans

1. DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.

2. To the extent possible, the Contractor shall satisfy plan liabilities to plan

participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.

3. Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.

4. If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the Parties.

5. On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

6. DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.

7. After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(n) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(o) Alternate Contractor Human Resource Requirements

1. Alternatively, the Contracting Officer may obtain an audit of the Contractor’s compensation and benefits system and of its incurred costs from either DCAA or from DOE’s independent public accounting firm (under contract with DOE); if the Contracting Officer does, the Contractor will not be required to submit the:
    i. Compensation Increase Plan; and/or
    ii. Employee Benefits Cost Study.

(p) Definitions

1. Commingled Plans. Cover employees from the Contractor's private operations and its DOE contract work.

2. Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.

3. Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.

4. Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.

5. Designated Contract. For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.

6. Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

7. Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.

8. Separate Plan. Must satisfy IRC Section 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

9. Spun-off Plan. A new plan which satisfies IRC Regulation 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

(End of clause)

H.50 Workers' Compensation Insurance

(a) Contractors, other than those whose workers' compensation coverage is provided through a state-funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance. (Contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).

(b) Workers compensation loss income benefit payments, when supplemented by other programs (such as salary continuation, short-term disability) are to be administered so that total benefit payments from all sources shall not exceed one hundred percent (100%) of the employee's net pay.

(c) Contractors approve all workers compensation settlement claims up to the threshold established by the Contracting Officer for DOE approval and submit all settlement claims above the threshold to DOE for approval.

(d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

H.51 Reserved

H.52 Risk Management and Insurance Programs

(a) Basic Requirements.

(1) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (see DEAR 970.5070, "Indemnification," and DEAR 950.70, "Nuclear Indemnification of DOE Contractors"), unless it is with unallowable dollars.

(2) Insurance programs and related costs must comply with the cost limitations and exclusions at FAR 28.307, "Insurance Under Cost Reimbursement Contracts," FAR 28.308, "Self-Insurance," FAR 31.205-19, "Insurance and Indemnification,' and DEAR 970.5228-1, "Insurance Litigation and Claims."

(3) The insurance program must be conducted in the Government's best interest and at reasonable cost.

(4) Upon request, the Contractor shall submit copies of all insurance policies to the Contracting Officer no later than thirty (30) days after the effective date. The Contractor will maintain a record copy of all policies and key self-insurance documents.

(5) When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable. Use of a broker to obtain multiple bids is a satisfactory competitive process.

(6) Ensure self-insurance programs include the following items:

(i) Compliance with criteria set forth in FAR 28.308, "Self-Insurance." This includes hybrid plans (i.e., commercially purchased self-insurance with self-insured retention [SIR] such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission of FAR 28.308, as applicable.

(ii) If a self-insurance program is approved, it must be executed in compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.

(iii) Safeguards to ensure third-party claims and claims settlements are processed in accordance with approved procedures.

(iv) Accounting of self-insurance charges in the approved cost accounting system.

(v) Accrual of cash self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:

(A) The claims reserve, if held in cash, shall be held in a special fund or interest-bearing account.

(B) Submission of a formal written statement to the Contracting Officer stating that use of the cash reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.

(C) Annual accounting and justifications as to the reasonableness of the claims reserve available for the Contracting Officer.

(7) If the Contractor purchases a Letter of Credit or other financial instrument, the Contractor shall separately identify and account for the interest cost on the Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

(8) Comply with the Contracting Officer's written direction for the continuation of coverage and settlement of incurred and/or open claims owed or owing for prior DOE contracts.

(b) Plan Experience Reporting.

The Contractor shall:

(1) Provide the Contracting Officer, upon request, with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:

(i) The amount paid for each claim.

(ii) The amount reserved for each claim.

(iii) The direct expenses related to each claim.

(iv) A summary for the years showing total number of claims.

(v) A total amount for claims paid.

(vi) A total amount reserved for claims.

(vii) The total amount of direct expenses.

(2) If requested, provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums and costs for claims servicing) and major claims during the year, including those expected to become major claims (i.e., those claims value at $100,000 or greater).

(3) Provide additional claim financial experience data as may be requested on a case-by-case basis.

(c) Terminating Operations.

The Contractor shall:

(1) Ensure protection of the Government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating, if applicable.

(2) Identify and provide insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.

(3) Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination.

(d) Insurance Policy Cancellation.

The Contractor shall:

(1) Obtain written approval of the Contracting Officer for any change in program direction; and

(2) Ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

H.53 Conference Management

The Contractor agrees that:

(a) The Contractor shall ensure that Contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds, and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the Contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

(b) For the purposes of this clause, "conference" is defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015, entitled "Updated Guidance on Conference-Related Activities and Spending."

(c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:

(1) The Contractor provides funding to plan, promote, or implement an event, except in instances where a Contractor:

(i) Covers participation costs in a conference for specified individuals (students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual Contractor for a specific conference); or

(ii) Purchases goods or services from the conference planners (e.g., attendee, registration fees, renting booth space, etc.).

(2) The Contractor authorizes use of its official seal, or other seals/logos/trademarks to promote a conference. Exceptions include non-M&O contractors that use its seal to promote a conference that is unrelated to its DOE contract(s) (i.e., if a DOE IT contractor were to host a general conference on cyber security).

(d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.

(e) The Contractor will provide information on conferences it plans to sponsor with expected costs exceeding $100,000 in the Department's Conference Management Tool, including:

(1) Conference title, description and date;

(2) Location and venue;

(3) Description of any unusual expenses (e.g., promotional items);

(4) Description of contracting procedures used (e.g., competition for space/support);

(5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees); and

(6) Number of attendees.

(f) The Contractor will not expend funds on the proposed Contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the Contracting Officer.

(g) For DOE-sponsored conferences, the Contractor will not expend funds on the proposed conference until notified by the Contracting Officer.

(1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorize the use of the official DOE seal, or other seals/logos/trademarks to promote a conference. Exceptions include instances where DOE:

(i) Covers participation costs in a conference for specified individuals (students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference), or

(ii) Purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space, etc.); or provide funding to the conference planners through federal grants.

(2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.

(3) The Contractor will provide cost and attendance information on its participation in all DOE-sponsored conferences in the DOE Conference Management Tool.

(h) For non-contractor sponsored conferences, the Contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, and reasonable, and further the mission of DOE/NNSA. This process must at a minimum:

(1) Track all conference expenses.

(2) Require the Laboratory Director (or equivalent) or Chief Operating Officer to approve a single conference with net costs to the Contractor of $100,000 or greater.

(i) Contractors are not required to enter information on non-sponsored conferences in DOE'S Conference Management Tool.

(j) Once funds have been expended on a non-sponsored conference, the Contractor may not authorize the use of its trademarks/logos for the conference, provide the conference planners with more than $10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If the Contractor does so, its expenditures for the conference may be deemed unallowable.

H.54 Management and Operating Contractor Subcontract Reporting (Nov 2017)

(a) Definitions. As used in this clause –

"First-tier subcontract." A subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

"Management and Operating Contractor Subcontract Reporting Capability (MOSRC)." A DOE system and associated processes to collect key information about the Management and Operating Contractor's first-tier subcontracts for reporting to the Small-Business Administration.

"Transaction." Any contract, order, other agreement, or modification thereof (other than ones involving an employer-employee relationship) entered into by the Contractor acquiring supplies or services (including construction) required solely for performance of the prime contract.

(b) Reporting. The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small-Business Administration, in accordance with the most recent reporting instructions at https://energy.gov/management/downloads/mosrc-reporting-instructions. The Contractor shall report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. Contact your Contracting Officer if uncertain of information reporting requirements. The MOSRC reporting requirement does not replace any other reporting requirements (e.g., the Electronic Subcontracting Reporting System or the FFATA Subcontracting Reporting System).

H.55 Real Property Asset Management

(a) Background. The requirements associated with DOE Order 430.1C, "Real Property Asset Management," and DOE Order 437.1, "Bridge and Tunnel Management," have federal regulatory basis founded upon provisions found in the Code of Federal Regulations (CFR). Key parts of each order include:

DOE O 430.1C – 41 CFR:

(1) Part 102-84, "Annual Real Property Inventories."

(2) Part 102-75.60, "What are Landholding Agencies' Responsibilities Concerning Real Property Surveys?"

(3) Part 102-79, "Assignment and Utilization of Space," and

(4) Part 102-75, "Real Property Disposal."

Other similar regulations include:

(5) 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs."

(6) FAR Part 45, "Government Property," including Part 45-105, Contractors' Property Management System Compliance."

(7) DEAR Part 917, "Special Contracting Methods," and subpart 917.74, "Acquisition, Use, and Disposal of Real Estate."

(8) OMB Circular A-11, "Preparation, Submission, and Execution of the Budget," and Section 31.9, "Construction, Leases of Capital Assets, and Acquisition of Real Property."

DOE O 437.1 – 23 CFR and 49 CFR:

(1) 23 CFR Part 650, Subpart C, National Bridge Inspection Standards;

(2) 23 CFR Part 650, Subpart E – National Tunnel Inspection Standards;

(3) 49 CFR Part 213, Federal Railroad Administration Bridge Safety Standards; and

(4) 49 CFR 237.71 Subpart D, Determination of Bridge Load Capacities.

(b) Requirements. DOE Order 430.1C and 437.1 bring these provisions together and for application specifically to DOE operations. The Contractor shall meet the functional intent of the order through tailoring of its business processes and management practices, and use of standard industry practices and standards as applicable. The Contractor shall flow down these requirements to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(1) The Contractor shall generally comply with Departmental requirements and guidance involving the acquisition, management, maintenance, disposition, or disposal of real property assets to ensure that real property assets are available, utilized, and in a suitable condition to accomplish DOE's missions in a safe, secure, sustainable, and cost-effective manner.

(2) The intent of the following expectations is to be outcome oriented with a focus on the expected performance and results, not strictly on a compliance basis. Where specific guidance is given in the order or other requirements documentation, the Contractor should follow the guidance with the understanding it has the latitude to accomplish the required outcomes via its own processes. The Contractor's business processes and management practices shall be tailored to include, as a minimum, the following functional requirements:

(i) All real estate actions to acquire, utilize, and dispose of real property assets shall be provided to DOE for review and approval. Where applicable, complete and current real estate records shall be maintained.

(ii) Physical condition and functional utilization assessments shall be performed on each real property assets at least once every five-year (5) period or at another risk-based interval as approved by DOE Idaho Operations Office, and based on industry leading practices, voluntary consensus standards, and customary commercial practices.

(iii) A maintenance management program shall be established that includes a computerized maintenance management system (CMMS); a condition assessment system; a master equipment list; maintenance service levels; a method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies as either deferred maintenance and repair (DM) or repair needs; management of the DM backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.

(iv) The facilities information management system (FIMS) data and records for all INL lands, buildings, trailers, and other structures and facilities shall be accurately maintained. FIMS data must be current and verified annually.

(v) The contractor must establish and maintain a documented bridge and tunnel management approach satisfying Federal regulations, DOE directives, and industry standards and practices. The contractor's bridge and tunnel management approach must satisfy these requirements for the following structures: public- and controlled-access vehicular bridges; public- and controlled-access railroad bridges; public- and controlled-access pedestrian bridges, including elevated walkways; public- and controlled-access vehicular tunnels; and culverts assigned Usage Code 2629 in the Facilities Information Management System. These include requirements specific to assets with fracture critical member bridges or complex features.

(c) The provisions of subsection (f) "Risk of Loss of Government Property" of the Section I.55 clause entitled, "Property" (DEAR 970.5245-1), of this contract shall apply to this clause H.55.

H.56 Foreign Engagements – Technology Transfer Agreements/Memoranda of Understanding

(a) Background.

(1) This clause provides clarification and instruction regarding how the Contractor should implement DOE Policy 485.1, "Foreign Engagements with DOE National Laboratories," and to clarify any ambiguity or confusion relating to its implementation. Nothing in this clause supersedes or otherwise contradicts the terms of the policy.

(2) Under the terms of the Policy, engagements, defined in paragraph (d), with foreign entities, defined in paragraph (b), must be submitted to DOE Headquarters for review and clearance. These engagements are reviewed to ensure:

(i) Consistency with strategic interests and foreign policies of the U.S.;

(ii) Legal soundness and compliance with existing U.S. laws and regulations; and that

(iii) Counterintelligence considerations were appropriately addressed.

(3) Due to the complexity and the variety of INL engagements and Laboratory partners, this clause is to be used as a reference to determine if a referral is required. If doubt exists, the Contractor should consult with the DOE Idaho Operations Office for a final determination.

(4) Any engagement derived from or in support of the Center for Advanced Energy Studies (CAES), it will be subject to DOE Policy 485.1 and this clause. Such engagements, if determined to include a foreign entity or suspected entity that may be of foreign origin, shall be submitted to DOE Headquarters for review and clearance.

(b) Types of Foreign Entities Subject to DOE Headquarters Review.

The term "foreign entities" is defined in Footnote 1 of DOE Policy 485.1. "Engagements," as defined in paragraph (d), with the following types of entities must be submitted to DOE Headquarters for review and clearance.

(1) Foreign governments/foreign government agencies, including:

(i) All governments and agencies at the national, provincial/state, or local level that are located outside the U.S. and its territories and possessions;

(ii) Foreign-based public universities, public utilities, public research institutes, etc.; and

(iii) Any corporation or entity directly controlled by a foreign government.

Examples of this include crown corporations or quasi-governmental entities.

(2) International organizations, including:

(i) All international organizations without regard to U.S. membership therein. This includes the United Nations, the International Atomic Energy Agency, the Comprehensive Test Ban Treaty Organization, etc.

(ii) Laboratory entities belonging to international organizations such as the Joint Research Centre of the European Commission.

(3) Foreign business or entity organized/chartered/incorporated outside of the U.S. or its territories, including:

(i) For-profit and non-profit entities, even if its primary or exclusive place of operation is within the U.S. or its territories; and

(ii) Businesses organized abroad by U.S. corporations or by U.S. nationals.

(4) U.S. organized/incorporated business-owned, controlled, or influenced by a foreign government, agency, firm, or corporation, including U.S. based/organized/operating businesses:

(i) Wholly-owned by a foreign parent company;

(ii) With a foreign company holding a majority interest in the business of voting stock; and

(iii) With a foreign government controlling/majority ownership interest of common/voting stock. However, this does not include U.S. based/organized/operating business where such ownership interest is in the form of publicly traded stock and the foreign government has less than a majority share of voting stock.

(5) Foreign National/Non-U.S. Citizen

(i) Sole proprietorships/partnerships with non-U.S. citizen in an ownership position; and

(ii) U.S. based/organized/operating business with a board comprised solely of non-U.S. citizens.

(c) In order to demonstrate due diligence and to assist in expediting the review process of engagements subject to this clause, the Contractor should take the following steps:

(1) Acquire a business intelligence database report regarding the potential participant/sponsor's corporate ownership. The DOE Idaho Operations Office does not recommend one (1) report over another, but the report should include

ownership information and highlight any foreign ties within the key management. Examples of suppliers of such reports include Dun & Bradstreet, Thomson Reuters, Bloomberg, etc.

(2) Include this report with the rest of the agreement documents when review and clearance is sought from DOE Headquarters and when the agreement package is submitted through the Document Review System (DRS) to the DOE Idaho Operations Office.

(3) If the Contractor has questions regarding whether a corporation falls within any of these categories, it should send the question to the DOE Idaho Operations Office Strategic Partnership Projects (SPP) administrator and the DOE Idaho Operations Office counsel responsible for technology transfers.

(d) Types of Engagements Subject to DOE Headquarters Review.

The application of the policy is limited to agreements creating a collaborative engagement between DOE laboratories and foreign entities. The five (5) listed legal mechanisms in the policy can be broken into three (3) types of documents: Non-Binding Agreements, Standardized Binding Agreements, and Non-Standardized Binding Agreements.

(1) **Non-Binding Agreements; Memoranda of Understanding (MOUs)**. This is a broad category that encompasses a variety of differently named agreements including: memorandum of understanding, memorandum of agreement, agreement-in-principle, letter of intent, statement of intent, etc. There are two (2) common attributes for each of these agreements:

(i) The agreement outlines a collaborative framework between the Laboratory and the foreign entity; and

(ii) The agreement itself contains no obligatory or legally binding language.

(2) **Standardized Binding Agreements**. All technology transfer agreements for which DOE has issued defined terms and conditions fall within this category: SPPs, Cooperative Research and Development Agreements (CRADAs), and Agreements for Commercializing Technology (ACTs). This category does not include Nuclear Science User Facilities (NSUF) Agreements.

(3) **Non-Standardized Binding Agreements**. This category includes binding agreements processed as CRADAs, but which use another entity's terms and conditions (e.g., the International Atomic Energy Agency's Coordinated Research Projects). It also includes any agreement wherein the Laboratory agrees to perform work for a foreign entity.

This category does not include agreements like secondment agreements, material transfer agreements, title transfer agreements, non-disclosure agreements, licenses, or other agreements in which no work is being performed as

collaboration or for and on behalf of a foreign partner.

(4) Questions regarding the applicability of DOE Policy 485.1 to other agreements proposed by the Contractor should be submitted to the DOE Idaho Operations Office SPP administrator and the DOE Idaho Operations Office counsel responsible for technology transfer.

(e) Negotiation of MOUs.

The rules regarding negotiation apply only to MOUs and other related non-binding agreements. These rules do not apply to ACTs, CRADAs, SPPs or other binding agreements.

(1) The Contractor may engage potential international/foreign partners to develop non-binding agreements prior to entering formal negotiations governed by DOE Policy 485.1. The restrictions on negotiations are triggered by the creation of draft text of the MOU or other non-binding agreements in cases where the Contractor drafts the MOU. If the INL receives a draft text from its foreign partners, the restrictions are triggered after the Contractor marks up the received MOU from its foreign partners, but before it returns the MOU to the foreign partner for further discussion. Negotiation does not include such actions as discussing capabilities of the INL and the other parties or discussions of potential areas of work or collaboration.

(2) After the restrictions on negotiations are triggered in the preceding paragraph, the Contractor must submit the draft text to the INL Senior Counterintelligence Officer, the INL Export Control office, and the DOE Idaho Operations Office site counsel for review. Upon completion of these reviews, the Contractor shall submit the marked-up MOU to DOE Headquarters office as indicated in DOE Policy 485.1.

(f) Treatment of Renewals and Agreement Modifications.

(1) All foreign agreements approved by DOE Headquarters are subject to re-approval every five (5) years from the date of the last approval/re-approval. These agreements should be resubmitted according to the normal policy submission practice.

(2) Modifications to agreements may require resubmission to DOE Headquarters. The following guidelines have been adopted by the DOE Idaho Operations Office in consultation with DOE Headquarters:

(i) For agreements under $200,000 total cost, modifications increasing the value of the agreement by less than fifty percent (50%) will be submitted to and reviewed for information only by the DOE Idaho Operations Office's SPP administrator, the DOE Idaho Operations Office counsel responsible for technology transfer, and DOE Headquarters;

(ii) For agreements over $200,000 in total cost, modifications increasing the cost of the agreement by greater than fifty percent (50%) will be submitted to DOE Headquarters for approval; and

(iii) Modifications encompassing a change in the foreign partner (through sale/merge/other) must be submitted to DOE Headquarters for review.

H.57 Legal Defense and Reimbursement of Contractor Protective Force Officers

(a) It is Government policy to defend, or have an employing Contractor defend, any Contractor Protective Force Officer if a claim or legal action is brought against the officer as a result of that officer's conduct when performing arrest duties within the scope of employment, as authorized by Section 161.k of the Atomic Energy Act, in a reasonable and justifiable manner. Standards for performance of arrest duties are set forth in 1O CFR part 1047, "Limited Arrest Authority and Use of Force by Protective Force Officers." The Contractor shall inform each Protective Force officer of these provisions and obtain his or her agreement to such of these provisions as would apply to the individual officer's rights or obligations.

(1) The Contractor shall give the Contracting Officer immediate notice in writing of any action or claim filed arising out of the Protective Force officer's conduct when performing arrest duties.

(2) Except as otherwise directed by the Contracting Officer in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor or the Protective Force officer with respect to such action or claim.

(3) To the extent not in conflict with any applicable policy of insurance, the Contractor with the Contracting Officer's approval, may settle any such action or claim; shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the Protective Force officer's rights and claims (except those against the Government) arising out of any such action or claim against the Protective Force officer; and if required by the Contracting Officer, shall authorize a representative of the Government to settle or defend any such action or claim and to represent the Protective Force officer in, or to take charge of, any action.

(i) If the Government undertakes the settlement or defense of an action or claim against the Protective Force officer, the Contractor, and the officer shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(ii) Where an action against a Protective Force officer is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith and, in such event, the resulting defense and settlement expenses shall be reimbursable under the contract, provided, however, that the Government

shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

(4) The Government shall reimburse the Contractor for payment of any financial liability found against the Contractor or for payment by the Contractor of any financial liability found against any Protective Force officer individually if, in the judgment of DOE, that officer was performing arrest duties within the scope of employment in a reasonable and justifiable manner (see 10 CFR part 1047). The Contractor shall advise Protective Force officers of the appropriate procedure(s) for obtaining Contractor payments for any such financial liability judgment found against the officer.

(b) Contractor expenses incurred for the defense and settlement of a legal action and/or financial liability payments made pursuant to (a)(3)(ii) and (a)(4) shall be reimbursed as allowable costs under the contract. DOE's liability under this provision shall be limited to the amount of funds obligated under the contract. Where necessary as determined by the Contracting Officer, the amount obligated for the contract will be appropriately revised, subject to the availability of appropriated funds for such costs.

(c) The Contractor and each subcontractor shall make this policy applicable to any lower-tier subcontractors who either provide Protective Force officers or employ Protective Forces on a contractual basis.

(d) The following type of statement shall be obtained from each employee agreeing to each of the provisions as would apply to an individual officer's rights or litigation. The Contractor shall retain copies of these statements.

"I have been informed by the agreement between the Department of Energy and my employer regarding legal representation and reimbursement of Protective Force Officers. I agree to such of the provisions of that agreement as would apply to my rights and obligations in the event of a legal action or claim brought against me."

Name:

Date:

H.58 Agreements for Commercializing Technology

This H-clause authorizes the use of the mechanism: Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this H-clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessarily aimed at commercialization (e.g., technical assistance, training, studies), but which facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated

with this M&O contract for the purposes of conducting technical services, training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor's custody or available to the M&O Contractor under this M&O contract (unless specifically excluded by the Contracting Officer). For M&O Contractor activities conducted under authority of this H-clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph (i) below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the M&O Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

The following applies to all work conducted under the ACT mechanism regardless of the source of funding.

(a) *Authority to Perform work under this H-clause*. Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) and other applicable authorities, the M&O Contractor may perform work for non-Federal entities, in accordance with the requirements of this H-clause.

(b) *M&O Contractor's Implementation*. For ACT work conducted under the contract, the M&O Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this H-clause, which must be approved by the Contracting Officer, and such approval shall not be unreasonably withheld.

(c) *Conditions for Participation in ACT.* The M&O Contractor:

(1) Must not perform ACT activities that would place it in direct competition with the private sector;

(2) May only conduct work under this H-clause if the work does not interfere with or adversely affect projects and programs the M&O Contractor conducts on behalf of the DOE under this contract, and complies with the terms and conditions of the prime contract. If the Government determines that an activity conducted under this H-clause interferes with the Department's work under the M&O contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the M&O Contractor must stop the interfering ACT work immediately to the extent necessary to resolve the interference. At any time, the Contracting Officer may require the use of specified Government-owned or leased property and facilities for the exclusive use of the DOE mission by providing a written notice excluding said property from the M&O Contractor's activities under this H-clause. Any cost incurred as a result of Contracting Officer decisions identified in this subparagraph shall be borne by the M&O Contractor. The Contracting Officer shall provide to the M&O Contractor in writing its decision, identifying the issues and reasons for the decisions. The

M&O Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;

(3) Except as otherwise excluded in this H-clause, must perform all ACT activities in accordance with the standards, policies, and procedures that apply to performance under this M&O contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(4) Must maintain and provide when requested by the DOE Contracting Officer, a summary of project information for each active ACT project, consisting of: sponsor name; total estimated costs; project title and description; project point of contact; and estimated start and completion dates;

(5) Is responsible for addressing the following items in ACT agreements as appropriate: disposition of property acquired under the agreement; export control; notice of intellectual property (IP) infringement; and a statement that the Government and/or the M&O Contractor shall have the right to perform similar services in the statement of work for other parties as otherwise authorized by this M&O contract subject to applicable data restrictions;

(6) Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE M&O Contractor has its own pre-approved publications statement, and this should be included; and

(7) Must insert the following disclaimer in each agreement under ACT, which must be conspicuous (e.g. bold type, all capital letters, or large font) in all agreements under ACT so as to meet the standards of due notice.

DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN [INSERT NAME OF THE M&O CONTRACTOR] AND [THE OTHER IDENTIFIED PARTY]. THE UNITED STATES GOVERNMENT IS **NOT** A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR

INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

(d) *Contracting Authority.*

(1) Subject to DOE approval as described in this paragraph, the M&O Contractor is hereby authorized to negotiate terms and conditions between the M&O Contractor and third parties when entering into ACT agreements. The M&O Contractor will have no authority to bind the Government in any way with such terms and conditions. The Government will have no obligation to the M&O Contractor due to such terms and conditions.

(2) The M&O Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT agreement.

(i) A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a statement of work; an estimate of costs incurred under the M&O contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011-013; a signed certification by the private party(ies) that the M&O Contractor offered the option to use Cooperative Research and Development Agreements (CRADA) and Strategic Partnership Programs (SPP) alternatives (see paragraph (g)(1)) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized to fund the agreement except as authorized under the FedACT pilot (see paragraph (n) below); applicable Environmental Safety and Health (ES&H) and National Environmental Policy Act (NEPA) documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.

(ii) If the M&O Contractor, the M&O Contractor's parent, member,

subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member, or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary a project-specific addendum to the Master Organizational Conflict of Interest (OCI) Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph (g)).

(iii) If the ACT agreement includes a foreign entity as a party or the statement of work includes the use of human subjects, animal subjects, classified or sensitive subject matter, or describes a workscope involving high risks or hazards including environmental issues, the M&O Contractor shall include additional information as necessary or as requested by the Contracting Officer.

(3) The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the M&O Contractor under subparagraph (d)(2) of this H-clause within ten (10) business days of receiving the Package and provide the M&O Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: (1) is consistent with or complementary to DOE missions and the contract statement of work; (2) will not adversely impact programs under the contract scope of work; (3) will not place the Contractor in direct competition with the domestic private sector; and (4) will not create a detrimental future burden on DOE resources.

(4) Except as conditionally allowed under subparagraph (i) below, the Contracting Officer must approve the Package before the M&O Contractor may begin work under the proposed ACT agreement. If the Contracting Officer rejects the Package then the Contracting Officer must provide said rejection to the M&O Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the M&O Contractor agrees to not further pursue the work described in the Package or incur additional costs under the M&O contract for the work described in the Package.

(i) The M&O Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three (3) business days. Upon such a determination from the Contracting Officer, the M&O Contractor may begin work under the ACT agreement at the M&O Contractor's risk pending final approval of the complete Package. The M&O Contractor must submit a complete Package, as identified in subparagraph (d)(2) above, within ten (10) business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the M&O Contractor, as no Federal funds will be used to fund any work conducted under this H-clause.

(ii) If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member, or subsidiary has an equity interest, is a party sponsoring work in connection with the ACT agreement, work may not commence until approval of the complete Package by the Contracting Officer.

(e) *Advance Payment for ACT Projects.* The M&O Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this H-clause consistent with procedures defined in the Department's Financial Management Handbook. The M&O Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this H-clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the M&O Contractor's work under this H-clause, the M&O Contractor is entirely at risk and the Government shall have no risk.

(f) *Costs.* All direct costs associated with M&O Contractor's work conducted under this H-clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this M&O contract shall also be applied to work conducted under this clause in accordance with the requirements of the Financial Management Handbook. As required by the Financial Management Handbook, changes to the Handbook will be incorporated into this H-clause by a unilateral administrative modification to the contract. In addition, all work must be performed at full costs which would include Federal Administrative Charge (FAC).

(1) Work conducted under this H-clause shall be excluded from the M&O contract award fee calculations and such fee shall not be allocable to work conducted under this H-clause.

(2) Federal funds will not be used to fund work conducted under this H-clause except as authorized under the FedACT pilot (see paragraph (n) below).

(g) *Organizational Conflict of Interest.* The M&O Contractor shall conduct work under this H-clause in a manner that minimizes the appearance of conflicts of interest and avoids or mitigates actual conflicts of interest with the M&O Contractor's functions under this M&O contract. Accordingly, the M&O Contractor shall develop an OCI Plan. The OCI Plan should address OCI issues that arise as a result of the M&O Contractor taking a financial interest in ACT projects, especially in those cases where the M&O Contractor retains rights in ACT IP. Said OCI Plan shall be provided to the Contracting Officer for review and approval as soon as practicable after execution of the M&O contract modification incorporating this H-clause into the M&O contract. Unless provided otherwise by the Contracting Officer, no work on ACT agreements may commence before Contracting Officer approval of the OCI Plan. In addition to those elements expressly stated in the OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The OCI Plan shall, at a minimum, include elements that address the following:

(1) *Full Disclosure*. Before work can begin under an ACT transaction, all parties to ACT agreements must sign a DOE-approved certification that they have been fully informed about the availability of SPP agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe SPP agreements, CRADAs, and ACT, and will include the relative disposition of IP rights and the costs (including identification of any additional costs e.g., insurance, and other compensation to the M&O Contractor under ACT) for each type of agreement for the scope of work being proposed.

(2) *Priority of Work*. The M&O Contractor shall not give work under ACT any special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the M&O Contractor's input.

(3) *Participation by Contractor-related Entity*. Where the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member, or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary an addendum to the OCI Plan to address special circumstances not fully anticipated in the OCI Plan.

(4) *Right of Inquiry for ACT IP Designation.* DOE Patent Counsel may inquire into the M&O Contractor's designation of any invention or data as arising under an ACT transaction. The M&O Contractor is responsible for curing any defect identified in such inquiry, and if the M&O Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.

(h) *Intellectual Property.* Disposition of IP arising from work conducted under this H-clause shall be governed by Class Waiver W(C)-2011-013 (ACT Class Waiver) which is incorporated herein by reference.

(1) All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the Section H clause of this M&O contract entitled, "Patent Rights – Management and Operating Contracts, Nonprofit Organizations or Small Business Firm Contractor."

(2) In reporting ACT inventions, the M&O Contractor shall identify the ACT agreement under which the invention was made and specify the rights reserved by the Government pursuant to the ACT Class Waiver.

(3) All technical data identified by the ACT client as Protected ACT Information shall also be marked to identify the ACT agreement under which the data was generated.

(4) The M&O Contractor shall ensure that all rights and obligations concerning ACT IP, including the appropriate IP provisions authorized in the ACT Class Waiver, are clearly provided in ACT agreements, and that all parties granted any rights in ACT IP are informed of the terms of the waived rights, including the rights reserved by the Government.

(5) Where the M&O Contractor receives ownership or license rights to ACT IP, the M&O Contractor may elect to commercialize the ACT IP consistent with the "Technology Transfer Licensing Program" clause of this M&O contract.

(6) As an alternative to subparagraph (5), if the M&O Contractor has an authorized Private Funded Technology Transfer (PFTT) program, the M&O Contractor may elect to retain private ownership of the ACT IP and commercialize the IP under its applicable PFTT clause, using its private funds, where no costs for developing, patenting, and marketing will be allowable under this M&O contract. The M&O Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (b) of the "Technology Transfer Licensing Program" clause of this M&O contract.

(7) For ACT projects in which the terms of the agreement provide that the Government reserves the right to use generated data after the particular project expires, the M&O Contractor must provide to the Office of Scientific and Technical Information (OSTI) computer software produced under the agreement in both source and executable object code format.

(8) Where terms and conditions governing Data and Subject Inventions under this contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.

(i) *Contractor Liability and Indemnification*.

(1) *General Indemnity*.

(i) The M&O Contractor agrees to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the ACT participants, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of an ACT transaction by the Government, the Department, the M&O Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the M&O Contractor, and not directly resulting from the fault or negligence of the Government, the

Department, or persons (other than the M&O Contractor) acting on their behalf.

(ii) Subject to Contracting Officer approval, the General Indemnity set forth in subparagraph (1)(i) above may be modified or waived where: (1) ACT participants are not providing material or equipment to the M&O Contractor to be used in the performance of the statement of work under the ACT transaction; and (2) ACT participants are not sending their employees to the M&O facility as part of the statement of work; and (3) the specific activities performed under the ACT transaction are normally performed by the DOE M&O Contractor under the DOE contract.

(iii) Notwithstanding the provisions in subparagraphs (1)(i) and (1)(ii) above, the M&O Contractor shall indemnify and hold harmless the Government, the Department, and persons acting on their behalf for loss, damage, or destruction of Government property resulting from the fault or negligence of the M&O Contractor. Such indemnification shall be subject to a liability limit of $2,000,000 (two million dollars) per year, or such greater liability limit approved by the cognizant DOE/NNSA Contracting Officer under the DOE contract. Above the applicable liability limit, the M&O Contractor's responsibility to the Government for such loss, damage, or destruction, shall be as set forth in the "Property" clause of this contract.

(2) *Intellectual Property Indemnity*. The M&O Contractor shall indemnify the Government, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed to be performed under the statement of work under an ACT transaction to the extent such acts are not already performed at the M&O contract facilities. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the M&O Contractor unless required by a court of competent jurisdiction.

(3) *Product Liability Indemnity*.

(i) Except for any liability resulting from any negligent acts or omissions of the Government, the M&O Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the ACT participants or the M&O Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. With respect to this H-clause, neither the Government nor the M&O Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the M&O Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to

the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the M&O Contractor. No settlement for which the M&O Contractor would be responsible shall be made without the M&O Contractor's consent, unless required by final decree of a court of competent jurisdiction.

(ii) Where the M&O Contractor assigns the responsibility for indemnifying the Government under subparagraph (3)(i) above to other ACT participants, the M&O Contractor agrees to seek such indemnification from the other ACT participants.

(4) *Claims and Liabilities*. Claims and liabilities resulting from the M&O Contractor's performance of work under an ACT transaction authorized pursuant to this H-clause shall not be subject to the M&O contract clause entitled, "Insurance - Litigation and Claims." In no event shall the M&O Contractor be reimbursed under the M&O contract for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, and judgment and settlements) incurred as a result of third-party claims related to the M&O Contractor's performance under this H-clause.

(5) *Government Obligations*. The M&O Contractor shall not include any guarantee or requirement that will obligate the Government to pay or incur any costs or create any liability on behalf of the Government in any ACT agreement or commitment the M&O Contractor executes under authority of this H-clause. The M&O Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the Government, such that, the M&O Contractor will be responsible for any costs or liability due to such a guarantee or requirement.

(6) *Insurance*. Any cost of insurance to cover risks of the M&O Contractor associated with ACT agreements is unallowable under this contract.

(j) *ACT Records.* All records associated with the M&O Contractor's activities conducted under authority of this H-clause, with the exception of information required under paragraphs (c)(5), (d)(2)(i), and (m), shall be treated as M&O Contractor-owned records under the provisions of the "Access to and Ownership of Records" clause of this M&O contract. The Government or its designees shall use such records in accordance with applicable Federal laws (including the Privacy Act), as appropriate.

(k) *Termination*. The Government or the M&O Contractor may terminate ACT authority under this contract by providing written notification of termination to the other party (Contracting Officer or the M&O Contractor) as appropriate, no less than sixty (60) days prior to the requested termination date. In such cases, the M&O Contractor shall provide DOE a comprehensive list of active ACT projects. DOE anticipates work commitments under these agreements will be completed regardless of termination. All costs associated

with early termination of any ACT agreements prior to the completion shall be the responsibility of the M&O Contractor.

(l) *Successor M&O Contractor*. To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor M&O Contractor, ACT agreement(s) executed under this H-clause and any contractual instruments associated therewith may be novated to the successor M&O Contractor with the mutual consent of the M&O Contractor, the successor M&O Contractor, and the parties to the affected ACT agreement(s). If the ACT agreement(s) cannot be novated, then the M&O Contractor as a private sponsor shall be permitted to enter into a non-Federal SPP agreement with the successor M&O Contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE SPP policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT agreement.

(m) *Minimum Reporting Requirements*. The M&O Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but not limited to the number of ACT agreements, the amount of funds reimbursed to DOE for work under ACT, and aggregate funding received beyond costs in the performance of ACT, the number of third party entities engaged through ACT that had not previously sponsored projects under the M&O contract, and the number that had not previously sponsored projects under any DOE/NNSA M&O contracts, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses, and start-ups arising from ACT. The M&O Contractor shall establish performance metric(s) to measure the time required to negotiate ACT agreements in a manner consistent with the time required to negotiate CRADAs and SPPs. The M&O Contractor shall obtain from each entity engaged in ACT, the entity's reason(s) for selecting ACT for performance of work under the M&O contract. Also, the M&O Contractor shall report the above identified data annually to the DOE Contracting Officer and in such a format which will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this M&O contract. Such records shall be made available in accordance with the clauses of this M&O contract pertaining to inspection, audit, and examination of records.

(n) *FedACT Pilot*. Under this paragraph, the DOE is authorizing a three (3)-year pilot program for Federally funded ACT (FedACT). FedACT contracts are ACT agreements between the M&O Contractor and a non-Federal third-party partner, where a portion of the project funding originates from a Federal agency (i.e., Federal appropriation). In most cases, the industry partner's original source of funds will have been as a result of a contract or financial assistance award from the Federal agency. Any agreement that includes Federal funds must be performed under the FedACT pilot. Federal funds used to support a FedAct project must solely be used to carry out the purposes of the Federal award. FedACT does not include agreements directly funded from another Federal agency. DOE and the M&O Contractor recognize that FedACT is a new mechanism and subject to modifications as more data and experience are realized. During the FedACT pilot either party may suggest changes to the program based on the experiences gained.

Furthermore, the M&O Contractor recognizes that the Department may decide to end the FedACT pilot at any time and that termination of the FedACT pilot by the Department will be in accordance with this paragraph. During the FedACT pilot, the M&O Contractor is permitted to negotiate and execute such agreements, subject to DOE approval, as described in paragraph (d) above and as set forth herein. The following additional requirements apply:

(1) The M&O Contractor agrees, prior to executing such agreements, to submit to DOE for approval, a modified ACT procedure for implementing the execution of FedACT.

(2) If the M&O Contractor is charging the third-party additional compensation beyond the full costs of the work performed under the M&O contract, the ACT agreement will not be approved unless DOE or the M&O Contractor obtains a written certification from the Federal agency funding the third party that such additional compensation using Federal funds is permissible under the Federal award. In order to maximize the transparency of the transaction to the funding agency, the written certification shall be in the form of a standard template approved by DOE. Such template shall include at a minimum:

(i) The amount of and explanation for the cost difference between performing the work as an ACT agreement as compared with an SPP or CRADA; and

(ii) A detailed description of the risk and/or consideration offered the participant by the M&O Contractor in exchange for charging beyond full cost recovery. This information shall also be included in the statement of consideration contained in the ACT proposal package submitted to the Contracting Officer.

(3) The M&O Contractor may not agree to any terms and conditions of the Federal award that conflict with this M&O contract.

(4) Notwithstanding any other provision in this H-clause, rights to ACT inventions and copyrights arising from work conducted under this paragraph made by the M&O Contractor shall be governed by the terms of the Patent and Data Rights clauses of this M&O contract, as well as any applicable PFTT clause. The ACT Class Waiver does not apply to any ACT agreement funded with Federal funds.

(5) DOE's approval to negotiate and execute a FedACT agreement under this paragraph is for the sole purpose of evaluating and considering the M&O Contractor and DOE's processes and procedures for implementing such FedACT agreements and does not in any way provide the Contractor authority beyond the scope of this paragraph or imply that permanent authority shall be forthcoming.

(6) Advance payment requirements in Section (e), equally apply to FedAct agreements.

(7) All work must be performed at full costs which includes a Federal Administrative Charge (FAC).

(8) Termination. The FedACT pilot implemented by this H-clause will terminate three (3) years from the date AL-2018-06 is issued, unless renewed by the Contracting Officer. The Government may provide the M&O Contractor with written notice to terminate the M&O Contractor's authority to conduct FedACT work under this H-clause at any time. If the Contractor's authority to conduct FedACT work under this H-clause has expired or been terminated, the M&O Contractor will be permitted, subject to any other provisions of this H-clause, to complete any FedACT work that had been approved by DOE prior to this H-clause being terminated by the Government.

H.59 EPAct Data Protection

(a) Rights to Protected Data

(1) In addition to the data rights set forth in 48 CFR § 970.5227-2 - Rights in data-technology transfer, for work authorized under the Energy Policy Act of 2005 (EPAct 2005) or the Energy Policy Act of 1992 (EPAct 1992), the Contractor may, with the concurrence of DOE, claim and mark as EPAct Protected Data, any data first produced in the performance of such work that would have been treated as a trade secret if developed at private expense. Any such claimed "EPAct Protected Data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraph (b) of this clause.

Protected Rights Notice
These protected data were produced under *[INSERT WORK IDENTIFIER]* with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until *[INSERT PERIOD OF PROTECTION END]* (Note: The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:

(i) For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or

(ii) To subcontractors or other team members performing work under the Government's program in which this data was produced, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data:

(i) At the end of the protected period;

(ii) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;

(iii) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or

(iv) If the Contractor disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Contractor shall not claim or mark as EPACT Protected Data, any lists of data identified by the funding program to be provided with unlimited rights. The Contractor agrees that notwithstanding the lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with the requirements of the Contractor’s contract, or from making publicly available unlimited rights data, nor does the lists of data constitute any admission by the Government that technical data not on the list is EPACT Protected Data.

(5) When a Cooperative Research and Development Agreement (CRADA) is used with an EPAct Awardee, the CRADA Protected Information clause may be modified to incorporate the Protected Rights Notice of this clause. When a Strategic Partnership Project (SPP) is used with an EPAct Awardee, the Rights in Technical Data clause may be modified to incorporate the Protected Rights Notice of this clause.

(6) The Government’s sole obligation with respect to any EPACT Protected Data shall be as set forth in this clause.

(b) Unauthorized or Omitted Marking of Data

(1) Notwithstanding any other provisions concerning inspection or acceptance, if any data developed is authorized by EPAct 1992 or 2005 bears any restrictive or limiting markings not authorized by this clause, the Contracting Officer has the right to remove, cancel, correct, or ignore any markings not authorized by this

clause on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the Contractor of the action taken.

(2) The Government assumes no liability for the disclosure, use or reproduction of any data provided to the Government by the Contractor that lacks any protected rights notice or other restrictive or limiting markings authorized by the Contractor's prime contract with DOE.

H.60 Quality Assurance Surveillance Plan

DOE's Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor's performance under the contract shall consist of the Performance Evaluation and Measurement Plan (PEMP) as called for within Section I, Clause I.10 entitled "DEAR 970.5203-1 Management Controls (Dec 2000) (DEVIATION)" and described in Clause I.19 entitled "DEAR 970.5215-3 Conditional Payment of Fee, Profit and Other Incentives – Facility Management Contracts (Jan 2004) Alternative II (Jan 2004)." The PEMP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations and acceptable quality levels for each task, describes how performance will be monitored and measured; describes how the results will be evaluated; and states how the results will affect contract payment.

H.61 Contractor's Obligations Regarding Funding Opportunity Announcement DE-FOA-0003612 Genesis Mission (July 2026)

The following requirements are applicable to all National Laboratory Awardees and Subawardees for the purposes of executing duly authorized work resulting from Funding Opportunity Announcement DE-FOA-0003612 only (these requirements do not apply to any other aspect of prime contract performance).

The National Laboratory Awardee is responsible for ensuring inclusion of these requirements into all subcontracts/agreements with Subawardees.

The following flow downs must be suitably modified to correctly identify the parties.

Section I. Data Rights
The Laboratory's Rights in Data clause (e.g. 48 CFR § 970.5227-2) and any rights described in a DOE approved Bridge Agreement (using CRADA authority) (the "Agreement") shall apply to the Laboratory for all work performed under DE-FOA-0003612, unless otherwise directed by Patent Counsel. Notwithstanding the foregoing, the Limited Rights Notice listed below and incorporated in a Laboratory subcontract must be used in lieu of the notice provided in 48 CFR § 970.5227-2(h), unless otherwise approved by Patent Counsel; additionally, any notice approved by DOE/NNSA in a Bridge Agreement or corresponding data use agreement may be used by the Laboratory as authorized therein.

For subcontractors, Patent Counsel hereby directs one of the following Rights in Data clauses suitably modified to identify the parties to be included in any subcontract under DE-FOA-

0003612. These clauses are consistent with the Laboratory's Rights in data-technology transfer clause (See 48 CFR § 970.5227-2(g)(1)). Any questions should be directed at the Laboratory patent counsel who should coordinate with the cognizant Patent Counsel as necessary.

For projects including open research, the following data clause must be used suitably modified to identify the parties. Additionally, a Bridge Agreement – OPEN must be executed.

[BEGIN OPEN DATA CLAUSE]

Open Data Rights Clause

(a) **The Awardee:**

(1) shall have the right to establish claim to copyright subsisting in any Data first produced in the performance of this Agreement, without the prior approval of the DOE/NNSA.

(2) shall ensure that all Data it provides or delivers under this Agreement are accompanied by rights and permissions sufficient to allow the Government and other Project participants to use such Data as required by this Agreement, including any rights necessary for reproduction, derivative works, distribution, public performance, and public display.

(3) shall negotiate and execute a Bridge Agreement including the allocation of data rights comprising at least a requirement herein, unless otherwise approved by DOE/NNSA.

(b) **The Government shall:**

(1) have Unlimited Rights in all delivered Data.

(2) at its sole discretion, disregard and remove any protective markings on any Data delivered. However, the Awardee shall be provided with at least 30 days to redeliver such data with corrected markings.

(3) have a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all Data delivered.

(c) **Publication Clause**

a. Awardee is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) [Enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not

necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

c. Subject to this Agreement, either party may release general information regarding activities conducted under this award. Awardee, however, shall not issue any press release resulting from activities conducted under this Agreement without DOE/NNSA approval, which shall not be unreasonably withheld or delayed.

d. The terms and conditions of this clause shall survive this Agreement.

[END OPEN DATA CLAUSE]

For other projects, the following data clause must be used suitably modified to identify the parties. The protection period in (b)(2) may be up to 5 years, unless otherwise authorized by DOE/NNSA. Additionally, a Bridge Agreement that does not use the "OPEN" template needs to be executed with a Data Use Agreement (DUA).

[BEGIN PROPRIETARY DATA CLAUSE]

Data Rights

(a) **Definitions**

(1) Limited rights Data, as used in this clause, means data (other than computer software) developed at private expense and first produced outside the performance of this agreement that embody trade secrets or are commercial or financial and confidential or privileged.

(2) Restricted Computer Software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

(b) **The Awardee shall**:

(1) have the right to protect the Limited Rights Data with the following notice.

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No. (and subaward/ contract No.). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Awardee, be used or disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(i) Use by Federal support services contractors within the scope of their contracts, including, but not limited to, DOE/NNSA laboratories, plants, and sites; or

(ii) for evaluation purposes to DOE/NNSA laboratories, plants, and sites, and non-profit research institutions.

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(2) have the right to protect Curated Data and Model Data developed in the performance of work under the Bridge Agreement (under the authority of 15 USC 3710a) consistent with 15 USC 3710a(c)(7)(B) with the following notice.

Protected Rights Notice

These protected data were produced under agreement no. (INSERT BRIDGE AGREEMENT NUMBER) between (INSERT THE SUBCONTRACTOR NAME) and (INSERT THE LABORATORY NAME) operated for the Government by (Inserted Contractor Operator) under Contract no. ____ and may not be published, disseminated, or disclosed to others outside the Government or its contractors until [Insert term authorized by DOE/NNSA] years after the date the data were first produced except for: (1) evaluation of work under the restriction that this data will be retained in confidence and not be further disclosed or (2) disclosure to a DOE/NNSA contractor under the restriction that this data will be retained in confidence and not be further disclosed, unless express written authorization is obtained from the Awardee. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.
(End of notice)

(3) Have the right to establish claim to copyright subsisting in any Data first produced in the performance of this Agreement, without the prior approval of the DOE.
(4) Obtain all Data and rights therein necessary to fulfill its obligations to the Government under this Agreement.
(5) Negotiate and execute a Bridge Agreement including the allocation of data rights comprising at least the following elements before beginning work under this agreement, unless otherwise approved by DOE/NNSA:

(i) RESERVED
(ii) Each party shall ensure that any Data it provides under this Agreement is accompanied by the rights and permissions necessary for use as required by this Agreement and shall provide data source or license documentation upon request.
(iii) The protection of any data shared amongst the parties consistent with this Agreement, including any Appendices.
(iv) Allocation of rights in AI Artifacts generated in the performance of work under this Agreement.

(c) The Government shall:
(1) Have unlimited rights in all delivered Data not having a protective marking authorized by (b)(1) and (b)(2) of this Clause.
(2) At its sole discretion, disclose any delivered Data for use solely in the evaluation of work under this Agreement under the restriction that any Data provided with the above Protected Rights Notice will be retained in confidence and not be further disclosed.
(3) At its sole discretion, disregard and remove any protective markings not

authorized by (b)(1) and (b)(2) of this Clause. However, the Awardee shall be provided with at least 30 days to redeliver such data with corrected markings.

(4) At its sole discretion, disregard and remove any protective markings on Data delivered:
  (i) at the end of the protection period;
  (ii) upon breach of Section (d) entitled "Access Restrictions and Limited U.S. First Deployment";
  (iii) if the data becomes publicly known or available from other sources; or
  (iv) if the Awardee disseminates or authorizes DOE/NNSA or another to disseminate such data without obligations of confidentiality.

(5) Have a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all Data delivered. Notwithstanding the foregoing, Data properly marked with the above Protected Notice shall be prohibited from disclosure outside the Government as required by the Protected Rights Notice.

(d) **Access Restrictions and Limited U.S. First Deployment**

(1) Definitions
  (i) "AI Artifact" shall mean any dataset, code, scripts, pipelines, models (including architectures, parameters, and weights), prompts, outputs, documentation, metadata, test/evaluation suites, synthetic data, and system/model/data cards created, used, or improved under the Bridge Agreement.
  (ii) "Data" shall mean recorded information, regardless of form or the media on which it may be recorded, including Technical Data. The term does not include information incidental to this Agreement administration, such as financial, administrative, cost or pricing or management information.
  (iii) "Foreign Country of Concern" shall mean the People's Republic of China, the Russian Federation, the Democratic People's Republic of Korea, the Islamic Republic of Iran, and Belarus, or any other country determined to be a foreign country of concern by the Secretary of State, and including countries of risk designated by DOE. This list is subject to change. DOE reserves the right, in the exercise of its absolute discretion, to add or subtract any foreign country determined to be of risk consistent with DOE policies by a unilateral amendment to this Agreement.
  (iv) "Foreign Entity" shall mean any corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments including state-owned enterprises. The term "Foreign Countries of Concern" and "Foreign National" are separate terms and not necessarily covered under the definition of a Foreign Entity although "Foreign Countries of Concern" are also "Foreign Entities".
  (v) "Foreign National" shall mean any individual other than a U.S. citizen.
  (vi) "Government" shall mean the Federal government of the United States of America including its agencies and departments.

(vii) "Intellectual Property" shall mean any and all subject inventions, copyrights, and trademarks developed by an Awardee.

(viii) "Non-Public Data" shall mean Data that has not been publicly distributed to others without restriction on further dissemination. Specifically excluded from this definition is data shared at a conference, public talk or other public forum if the data shared is shared without restriction on further dissemination.

(ix) "Bridge Agreement" means an agreement between the Awardee and their partners/collaborators in the performance of the Milestones, which is intended to address all data rights, including allocation of rights to AI Artifacts. The Bridge Agreement includes agreements with DOE/NNSA contractors, preferably using the preapproved AI BRIDGE AGREEMENT containing a Data Use Agreement (DUA) template.

(x) "AI Artifact" shall mean AI Artifacts developed in performance of the Milestones, including a Bridge Agreement.

(2) Access and Transfer Prohibition. Awardee agrees not to provide or allow others to provide access to any Non-Public Data or to license, assign or otherwise transfer any rights in Intellectual Property or Non-Public Data generated under this Agreement, at any tier, to entities with foreign ownership, interest, or control by a government or entity subject to the jurisdiction of a Foreign Country of Concern, without DOE/NNSA's prior written approval. Any failure to comply with this provision will be a breach of this Agreement and subject to available remedies for noncompliance. Specifically excluded from this restriction is a royalty free grant of a non-exclusive license of intellectual property to the general public (e.g. an open-source license or public domain).

(3) U.S. First Deployment. For a period of two years from the completion or termination of this Agreement with DOE/NNSA, the Awardee agrees not to provide or allow others to provide access to any Non-Public Data or to license, assign or otherwise transfer any rights in Intellectual Property or Non-Public Data generated under this Agreement, at any tier, to entities with foreign ownership, interest, or control by a government or entity not subject to the jurisdiction of the United States of America, without DOE/NNSA's prior written approval. Specifically excluded from this restriction is a royalty free grant of a non-exclusive license of Intellectual Property or Non-Public Data to the general public (e.g. an open-source license or public domain). Any failure to comply with this provision will be a breach of this Agreement and subject to available remedies for noncompliance.

(4) Immediate Access Termination. Any access or transfer of rights in violation of the above terms shall be immediately null and void. In the event of any rights holder's bankruptcy or related financial proceeding, insolvency, or other material financial distress that, in the sole judgment of DOE/NNSA, creates an unmanageable risk of unauthorized transfer or disclosure of Intellectual Property and/or Non-Public Data to a Foreign Country of Concern, all rights granted or access provided shall terminate immediately, and the Awardee shall take all necessary steps to secure and prevent further dissemination of such Intellectual Property and/or Non-Public Data.

(5) The Awardee shall include this clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, that may include the exchange of Non-Public Data.

(e) The terms and conditions of this clause shall survive this Agreement.

[END PROPRIETARY DATA CLAUSE]

Section II. Research, Technology and Economic Security (RTES)

(1) Foreign Entity Participation

A Foreign Entity is not eligible to participate as either an Awardee or Subawardee. In limited circumstances the Laboratory may request a waiver from DOE/NNSA to allow a foreign entity to participate, through the Contracting Officer (CO).

(2) Prohibition on Incorporation in or Ownership or Control by Foreign Countries of Concern

Throughout the life of the Agreement, the Awardee, parent company, Subawardees, and project team members shall not be solely incorporated in, or owned or controlled by, or subject to the direction of a Foreign Country of Concern. If there is a change in ownership or control that increases foreign ownership or control by Foreign Country of Concern or a change that effectively makes the entity subject to the direction of a Foreign Country of Concern, the Awardee must immediately alert the CO.

(3) Entity of Concern Prohibition

No Entity of Concern as defined in Section 10114 of Public Law 117-167 (42 USC 18912) may participate in the performance of the Milestones.

(4) Malign Foreign Talent Recruitment Program Prohibition

Individuals participating in a Malign Foreign Talent Recruitment Program, as defined in Section 10638(4) of P.L. 117-167 (42 USC 19237(4), 19232), are prohibited from participating in the performance of the Milestones.

(5) Due Diligence Reviews and Disclosures

The Agreement is subject to a post-selection and ongoing research, technology, and economic security risk review and monitoring to identify potential risks of undue foreign influence. As part of the review, the Awardee must cooperate with DOE/NNSA requests for information, including the following required disclosures and certifications for all covered individuals listed on the application and entities which must be updated within fifteen (15) business days of any changes except advanced notice to DOE/NNSA must be given for changes relating to a Foreign Country of Concern: DOE Common Form for Current and

Pending (Other) Support (42 USC 6605) including a Malign Foreign Talent Recruitment Program certification (see RFA), DOE Common Form for Biosketch (NSPM-33), and Transparency of Foreign Connections Transparency of Foreign Connections | Department of Energy (NSPM-33). New covered individuals listed on the application and entities added during the term of the Agreement must provide the disclosures above and receive DOE approval before participating. All information provided must be inclusive of the Subawardees. DOE/NNSA may share information regarding the risks identified as part of the RTES due diligence review process or monitoring with other Federal agencies.

In the event an RTES risk is identified, or the required disclosures, certifications, or updates, are not submitted, or there is non-compliance with any provision of this Section, DOE/NNSA may require risk mitigation measures, including but not limited to, requiring that an individual or entity not participate in the performance of the Milestones, or implementing other controls such as data access restrictions, enhanced monitoring, or project scope adjustments, as determined necessary by DOE/NNSA to safeguard national security and economic interests. If significant risks are identified and cannot be sufficiently mitigated, DOE/NNSA may withhold Payment or terminate the Agreement.

DOE/NNSA decision regarding a due diligence review is not appealable.

(6) Performance of Work in the United States

All work performed under DOE agreements must be performed in the United States unless the DOE CO grants a written waiver. This requirement does not apply to the purchase of supplies and equipment; however, the Awardee and Subawardees should make every effort to purchase supplies and equipment within the United States. The Awardee must flow down this requirement to its Subawardees and subcontractors. The Awardee is responsible should any work under this agreement be performed outside the United States, absent a waiver, regardless if the work is performed by the Awardee, Subawardees, subcontractors or other project partners. There may be limited circumstances where it is in the interest of the project to perform a portion of the work outside the United States. To seek a waiver of the Performance of Work in the United States requirement, the Awardee must submit a written waiver request to the DOE/NNSA CO.

(7) Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this agreement should be American-made.

(8) Conflicts of Interest

The Awardee shall adopt and maintain a conflict of interest policy under this

Agreement, which shall be provided to DOE/NNSA upon request. This conflict of interest policy shall address both individual conflicts of interest as related to Key Personnel and Organizational Conflicts of Interest, including but not limited to financial conflicts of interest (FCOI) (i.e., managed and unmanaged/unmanageable).

The Awardee shall disclose in writing to the DOE/NNSA CO any potential or actual Conflict of Interest as soon as reasonably practical after discovery thereof. The Awardee and the DOE/NNSA shall jointly develop a mitigation plan to address Conflicts of Interest as they arise.

(9) Annual List of Personnel

The Awardee shall submit an updated list of all personnel working on the project on an annual basis to the DOE/NNSA CO, including all Subawardees.

Section IV. Communication

A. Administration. Unless otherwise provided in this Agreement, approvals permitted or required to be made by DOE/NNSA, or any other document that binds the government, may be made on by the DOE/NNSA CO. Contractual matters under this agreement shall be referred to the following representatives of the Parties:

DOE/NNSA Contracting Officer: Name, Phone, Email
Patent Counsel: Name, Phone, Email
Laboratory Awardee Point of Contact: Name, Phone, Email

B. Technical and Milestone Deliverables. Technical matters and milestone deliverable matters under this Agreement shall be referred to the following representative:

DOE Technical Representative: Name, Phone, Email

C. Change of Designated Representative. Each party may change its representatives named in this Article by written notification to the other parties.

Section V. Termination

The Department of Energy reserves the right to terminate this award. In the event of any termination of the award made under DE-FOA-0003612, DOE/NNSA reserves the right to unilaterally withhold funding not yet distributed pursuant to the Milestones outlined in the Work Authorization. Mutual termination does not impose any requirements that DOE/NNSA pay in whole or part for milestones not achieved.

In the event of any termination by DOE/NNSA, neither DOE/NNSA nor the Awardee/Subawardee shall be liable for any loss of profits, revenue, or any indirect or consequential damages incurred by the other Party, its contractors, subcontractors, or customers as a result of any termination of this Agreement. DOE/NNSA's or the Awardee's liability for any damages under the Agreement is limited solely to direct damages, incurred by

the other Party, as a result of any termination of this Agreement subject to mitigation of such damages by the complaining party. However, in no instance shall DOE/NNSA's liability for termination exceed the total amount due under the milestone towards which the Awardee/Subawardee is currently working under this Agreement.

Section VI. Defined Terms

In addition to terms defined in other provisions of this Agreement, the terms and phrases as defined below, when used herein as the defined term shall have the following meanings:

"AI Artifact" shall mean any dataset, code, scripts, pipelines, models (including architectures, parameters, and weights), prompts, outputs, documentation, metadata, test/evaluation suites, synthetic data, and system/model/data cards created, used, or improved under the Bridge Agreement.

"Covered Individual" means an individual who (a) contributes in a substantive, meaningful way to the scientific development or execution of the scope of work of the agreement, and (b) is designated as a covered individual by DOE. DOE designates as covered individuals any principal investigator (PI); project director (PD); co-principal investigator (Co-PI); co-project director (Co-PD); project manager; and any individual regardless of title that is functionally performing as a PI, PD, Co-PI, Co-PD, or project manager. Submission of a current and pending support disclosure and/or biosketch/resume for a particular person serves as an acknowledgement that DOE designates that person as a covered individual. DOE may further designate covered individuals during the agreement period of performance.

"Curated Data" shall mean any Data generated in the performance of Milestone 2 or Technical Objective 2.

"Data" shall mean recorded information, regardless of form or the media on which it may be recorded, including Technical Data. The term does not include information incidental to agreement administration, such as financial, administrative, cost or pricing or management information.

"Data and Intellectual Property Rights Certification" shall mean a formal written statement, signed by an authorized representative of the Awardee, delivered as part of a Milestone, which attests that the Awardee has the necessary legal and contractual rights to all data, software, and intellectual property used in a delivered AI Artifact, sufficient to enable its deployment and use as contemplated under this Agreement.

"Effective Date" shall mean the date upon which the Agreement will enter into force which will be the date of the last signatory to the Agreement.

"Foreign Country of Concern" shall mean the People's Republic of China, the Russian Federation, the Democratic People's Republic of Korea, the Islamic Republic of Iran, and the Republic of Belarus, or any other country determined to be a foreign country of concern by the Secretary of State and including countries of risk designated by DOE. This list is subject to change. DOE reserves the right, in the exercise of its absolute discretion, to add or subtract any foreign country determined to be of risk consistent with DOE policies by a unilateral amendment to this Agreement.

“Foreign Entity” shall mean any corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the United States, and does not have a physical location for business in the United States. The term “Foreign Entity” also includes international organizations, foreign governments and any agency or subdivision of foreign governments including state-owned enterprises. The term “Foreign Countries of Concern” and “Foreign National” are separate terms and not necessarily covered under the definition of a Foreign Entity although “Foreign Countries of Concern” are also “Foreign Entities”.

“Foreign National” shall mean any individual other than a U.S. citizen.

“Government” shall mean the Federal government of the United States of America including its agencies and departments.

“Intellectual Property” shall mean any and all subject inventions, copyrights, and trademarks developed by an Awardee.

“Limited rights Data” shall mean data developed at private expense and first produced outside the performance of this agreement that embody trade secrets, or are commercial, or financial, and confidential or privileged.

“Material Breach” shall mean a breach by the Awardee/Subawardee or DOE of any of its obligations under this Agreement including those which result, or are likely to result, in the inability of the Awardee or DOE to effectively complete the Milestones. This includes but is not limited to the failure to achieve Milestones, breach of provisions included in the Agreement.

“Model Data” shall mean any data generated in the performance of Milestone 3- Creation of an AI Model.

“Non-Public Data” shall mean Data that has not been publicly distributed to others without restriction on further dissemination. Specifically excluded from this definition is data shared at a conference, public talk or other public forum if the data shared is shared without restriction on further dissemination.

“Organizational Conflicts of Interest” shall mean where the Awardee is unable, or appears to be unable, to be impartial in conducting activities under this agreement due to its relationships with affiliates, organizations, or any other interested party.

“Unlimited Rights” shall mean the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.