

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE		PAGE 1 OF 2 PAGES				
2. AMENDMENT/MODIFICATION NUMBER P00063		3. EFFECTIVE DATE 08/21/2026		4. REQUISITION/PURCHASE REQUISITION NUMBER		5. PROJECT NUMBER (If applicable)			
6. ISSUED BY CODE 892430 SC Consolidated Service Center - CH Office of Science U.S. Department of Energy 9800 South Cass Avenue Lemont IL 60439				7. ADMINISTERED BY (If other than Item 6) CODE 060006 Fermi Site Office U.S. Department of Energy Fermi Site Office P.O. Box 2000 Batavia IL 60510					
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, county, State and ZIP Code) FERMI FORWARD DISCOVERY GROUP, LLC Attn: Tracey Quinn 5801 S ELLIS AVE STE 619 CHICAGO IL 606375418				9A. AMENDMENT OF SOLICITATION NUMBER (X) 9B. DATED (SEE ITEM 11) 10A. MODIFICATION OF CONTRACT/ORDER NUMBER 89243024CSC000002 10B. DATED (SEE ITEM 13) 09/30/2024					
CODE VLS6K3EVCMW5		FACILITY CODE							

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended. ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
See Schedule

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NUMBER AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NUMBER IN ITEM 10A.
☐	
☐	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
☒	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.103(a), Agreements of the parties modifying the terms of the contract.
☐	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
See continuation page

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Robert M. Scott	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA Electronic Signature on File	16C. DATE SIGNED 08/21/2026
(Signature of person authorized to sign)		(Signature of Contracting Officer)	

Previous edition unusable

NAME OF OFFEROR OR CONTRACTOR
FERMI FORWARD DISCOVERY GROUP, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	UEI: VLS6K3EVCMW5 Confirming Order Placed With: 1, Do Not Duplicate The purpose of this Modification is to execute a Language Modification. The section of the Fermilab M&O Contract that will be revised as a result of this modification are the following: -Section H - SPECIAL CONTRACT REQUIREMENTS All other terms and conditions remain the same. Payment: Period of Performance: 10/01/2024 to 12/31/2029				

Table of Changes for
Fermi Forward Discovery Group, LLC
Contract No. 89243024CSC000002
Modification No. 063

The purpose of this modification is to update the following:

CONTRACT SECTION H
SPECIAL CONTRACT REQUIREMENTS

Clause No.	Title	Change and Explanation
Clause H.5	ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS	Item (b)(2)
Clause H.11	ALLOWABLE CONTRACTOR GOVERNANCE AND CONTRACT MONITORING EXPENSES	Para. 1 and 2

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE OF 1 of 2
2. AMENDMENT/MODIFICATION NO. 063		3. EFFECTIVE DATE See Block 16C		4. REQUISITION/PURCHASE REQ. NO.	
5. PROJECT NO. (If applicable) N/A					
6. ISSUED BY CODE U.S. Department of Energy Office of Science/Fermi Site Office P.O. Box 2000, Wilson Hall – MS 118 Batavia, IL 60510		7. ADMINISTERED BY (If other than Item 6) Code See Block 6.			
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code)					
Fermi Forward Discovery Group, LLC Pine Street and Kirk Road; MS 213 Batavia, IL 60510-5011					
9. A. AMENDMENT OF SOLICITATION NO.					
9. B. DATED (SEE ITEM 11)					
10. A. MODIFICATION OF Contract/Order NO. 89243024CSC000002					
10. B. DATED (SEE ITEM 13) October 1, 2024					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					

☐
The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning ___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGE-MENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

Not Applicable

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.)
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.103(a), Agreements of the parties modifying the terms of the contract.
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is required to sign this document and return 1 copy to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section heading, including solicitation/contract subject matter where feasible.)

SEE PAGE 2

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
Norbert Holtkamp, President FermiForward Discovery Group LLC		Robert M. Scott, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
Norbert Holtkamp Digitally signed by Norbert Holtkamp Date: 2026.08.21 09:19:09 -05'00' <i>(Signature of person authorized to sign)</i>	8/21/26	ROBERT SCOTT Digitally signed by ROBERT SCOTT Date: 2026.08.21 09:59:58 -05'00' <i>(Signature of Contracting Officer)</i>	8/21/26

14. Description of Amendment/Modification:

The purpose of this modification is to update the following:

1. PART I, SECTION H, SPECIAL CONTRACT REQUIREMENTS, dated 8/3/2026, (attached hereto) is substituted for the previous PART I, SECTION H, SPECIAL CONTRACT REQUIREMENTS incorporated into this contract by Modification No. P00029.

All other terms and conditions remain unchanged.

END OF MODIFICATION

SECTION H

SPECIAL CONTRACT REQUIREMENTS

TABLE OF CONTENTS

CLAUSE NO.	TITLE OF CLAUSE	PAGE NO.
H.1	LABORATORY FACILITIES	1
H.2	LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION	1
H.3	CONTRACTOR ASSURANCE SYSTEM	2
H.4	DEFENSE AND INDEMNIFICATION OF EMPLOYEES	3
H.5	ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS	4
H.6	ADMINISTRATION OF SUBCONTRACTS	5
H.7	PRIVACY ACT RECORDS	6
H.8	ADDITIONAL DEFINITIONS	7
H.9	SERVICE CONTRACT LABOR STANDARDS (41 U.S.C. 6701)	8
H.10	WALSH-HEALEY PUBLIC CONTRACTS ACT	8
H.11	ALLOWABLE CONTRACTOR GOVERNANCE AND CONTRACT MONITORING EXPENSES	9
H.12	RESERVED	
H.13	FACILITIES CAPITAL COST OF MONEY	10
H.14	STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION	10
H.15	CAP ON LIABILITY	13
H.16	NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS	13
H.17	APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS	13
H.18	EXTERNAL REGULATION	15

CLAUSE NO.	TITLE OF CLAUSE	PAGE NO.
H.19	SEPARATE ENTITY AND PERFORMANCE GUARANTEE	15
H.20	RESPONSIBLE CORPORATE OFFICIAL	16
H.21	EMPLOYEE COMPENSATION: PAY AND BENEFITS	16
H.22	POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS	31
H.23	CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES	32
H.24	ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES	32
H.25	WORKERS' COMPENSATION INSURANCE	33
H.26	LABOR RELATIONS	34
H.27	RESERVED ADDITIONAL LABOR REQUIREMENTS	35
H.28	CONTRACTOR'S OBLIGATIONS CONCERNING U.S MANUFACTURING REQUIREMENTS OF A DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES (DEC) (APR 2022)	35
H.29	DOE MENTOR-PROTÉGÉ PROGRAM	36
H.30	LOBBYING RESTRICTION	36
H.31	INTELLECTUAL AND SCIENTIFIC FREEDOM	37
H.32	CONFERENCE MANAGEMENT	37
H.33	INFORMATION TECHNOLOGY ACQUISITIONS	39
H.34	WORK PROGRAMS	39
H.35	SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT	42
H.36	CONTRACTOR RESOURCES, COMMITMENTS AND AGREEMENTS	42
H.37	ACTIVITIES DURING CONTRACT TRANSITION	42
H.38	WORKFORCE TRANSITION	45
H.39	MODIFICATION AUTHORITY	46
H.40	NO THIRD-PARTY BENEFICIARIES	46

CLAUSE NO.	TITLE OF CLAUSE	PAGE NO.
H.41	PROHIBITION OF FUNDING CERTAIN NONDISCLOSURE AGREEMENTS	46
H.42	RISK MANAGEMENT AND INSURANCE PROGRAMS	47
H.43	EPAct DATA PROTECTION (APR 2022)	50
H.44	REAL PROPERTY ASSET MANAGEMENT	52
H.45	DISPOSAL OF REAL PROPERTY	53
H.46	CONTRACTOR'S OBLIGATIONS REGARDING FUNDING OPPORTUNITY ANNOUNCEMENT DE- FOA-0003612 GENESIS MISSION (JULY 2026)	53

H.1 LABORATORY FACILITIES

DOE agrees to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at or near the Fermi National Accelerator Laboratory site in DuPage and Kane Counties, Illinois;
- (b) The Government-leased land, buildings, and other facilities situated at the former Homestake Mine in the City of Lead, Lawrence County, South Dakota, leased by the U.S. Department of Energy from the South Dakota Science and Technology Authority under Land Lease No. 8.02.19; and
- (c) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

H.2 LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION

- (a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.
- (b) Long-Range Planning. It is the intent of the Parties to develop a five-year strategic outlook for Fermi National Accelerator Laboratory. Development of this document is the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the designated period. It also serves as a baseline for placement of work at the Laboratory. The contents of the plan should include:

Mission Overview, Funding by Source, Human Resources, Core Capabilities, Science Strategies for the Future, Major Initiatives, Infrastructure Plans, Mission Readiness and Strategic Partnership Projects (SPP). The Contractor shall submit an annual Laboratory Plan which provides insight into accomplishments against this strategic document. The Contractor is expected to contribute to long range planning conducted by the Office of Science.

- (c) Budgetary Administration. DOE approval of program proposals and budget estimates will be reflected in work authorizations and financial plans developed and issued to the Contractor.

H.3 CONTRACTOR ASSURANCE SYSTEM

- (a) The Contractor shall develop a contractor assurance system that is executed by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:
 - (1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.
 - (2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.
 - (3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.
 - (4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor's work process and to carry out independent risk and vulnerability studies.
 - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (6) Integration of the assurance system with other management systems including Integrated Safety Management.
 - (7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient

and cost effective performance.

- (8) Continuous feedback and performance improvement.
- (9) An implementation plan (if needed) that considers and mitigates risks.
- (10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

The initial contractor assurance system description shall be approved by the Contracting Officer.

- (b) The Government may revise its level and/or mix of oversight of this contract when the Contracting Officer determines that the assurance system is or is not operating effectively.

CLAUSE H.4 – DEFENSE AND INDEMNIFICATION OF EMPLOYEES

- (a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this contract. Except for defense costs made unallowable by law, Section I Clause entitled “DEAR 970.5232-2 – Payments and Advances”, or the Major Fraud Act (41 U.S.C. § 4310), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I Clause entitled “DEAR 970.5228-1 – Insurance – Litigation and Claims”.
- (b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.
- (c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.
- (d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor’s counsel that the defense or indemnity of the employee is required by

the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

**CLAUSE H.5 – ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL
ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND
OTHER MATTERS**

Allowable costs under this contract shall be determined according to the requirements of Section I Clause entitled “DEAR 970.5232-2 – Payments and Advances”. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this contract to the extent indicated. Regarding the costs being specifically identified below as allowable, to be reimbursable under the contract they still must meet FAR 31.201-2’s five requirements for a cost to be allowable.

(a) ITEMS OF ALLOWABLE COSTS:

- (1) Cost for the defense and indemnification of employees in accordance with the provisions of Section H Clause entitled “Defense and Indemnification of Employees”.
- (2) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer.
- (3) Notwithstanding the provisions of FAR 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
- (4) Notwithstanding the provisions of FAR 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with

fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

- (5) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not otherwise unallowable under any other provisions of this contract.
- (6) Net costs for the Fermilab swimming pool subject to approval by the Contracting Officer.

(b) ITEMS OF UNALLOWABLE COSTS:

- (1) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- (2) Salaries/stipends/honorarium or other compensation of the Contractor's Board members and subcommittee members who are employees of the Contractor or employees of parent entities.
- (3) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to elsewhere in this contract or subsequently in writing by the Contracting Officer.
- (4) Contractor commitments incorporated in this contract as Section J. Appendix D.

CLAUSE H.6 – ADMINISTRATION OF SUBCONTRACTS

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- (b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C entitled "Description/Specifications/Statement of Work" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at \$5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by contractor employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at \$5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review

this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.

- (d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with Section I Clause entitled "DEAR 970.5243-1 – Changes". A "material change" for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory's budget. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor's annual available performance fee. The negotiation of fee will be in accordance with the Section I Clause entitled "DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount". The Parties will also negotiate appropriate adjustments to the Contractor's Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor's subcontracting base and goals.

CLAUSE H.7 – PRIVACY ACT RECORDS

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008), the Contractor shall maintain the following "Systems of Records" on individuals in order to accomplish the United States Department of Energy functions:

- (a) "Personnel Medical Records" (DOE-33) (Excepting Contractor Employees).
- (b) "Personnel Radiation Exposure Records" (DOE-35) respecting Contractor employees, DOE employees, and visitors to the contract site.
- (c) "Employee and Visitor Access Control Records" (DOE-51).
- (d) "Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites" (DOE-52).

The parenthetical Department of Energy number designations for each system of records refers to the official "System of Records" number published by the United States Department of Energy in the Federal Register pursuant to the Privacy Act.

If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974 and 10 CFR 1008, the Contracting Officer, or designee, shall so notify the Contractor, in writing, and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The Parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

CLAUSE H.8 – ADDITIONAL DEFINITIONS

- (a) "Contractor" means "the Offeror" as specified in Block 15A of Standard Form 33, Section A entitled "Solicitation, Offer and Award" of the contract.
- (b) The term "DOE" means the Department of Energy, "NNSA" means the National Nuclear Security Administration.
- (c) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (d) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy; and (iv) the Chairman, Federal Energy Regulatory Commission.
- (e) "Head of Contracting Activity" for the Office of Science means the Deputy Director for Operations.
- (f) "Laboratory" means the Fermi National Accelerator Laboratory (FNAL) composed of Government-owned buildings and facilities together with the necessary utilities, now existing or hereafter to be acquired, constructed and equipped, most of which are or will be situated on a plot or plots of land in Batavia, Kane, and DuPage Counties, Illinois and in Lead, South Dakota.
- (g) The term "someone acting as the Laboratory Director" means the person appointed as Laboratory Director; Deputy Laboratory Director(s) acting in the absence of the Laboratory Director; or a person specified, in writing, to have

authority to act in the absence of the Laboratory Director and Deputy Laboratory Director(s).

- (h) The term “non-profit organization” means:
 - (1) a university or other institution of higher education,
 - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
 - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
 - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.
- (i) The term “Senior Procurement Executive” means for:
 - (1) Department of Energy – Director, Office of Acquisition Management; and
 - (2) National Nuclear Security Administration – Associate Administrator for Acquisition and Project Management.

CLAUSE H.9 – SERVICE CONTRACT LABOR STANDARDS (41 U.S.C. 6701)

The Service Contract Labor Standards are not applicable to this contract. However, in accordance with Section I Clause entitled “DEAR 970.5244-1 – Contractor Purchasing System”, subcontracts awarded by the Contractor are subject to the Service Contract Labor Standards to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Labor Standards are applicable to particular subcontracts. In cases determined to be covered by the Service Contract Labor Standards, the Contractor shall prepare SF-98 and 98A “Notice of Intention to Make a Service Contract” (or documentation considered equivalent by the Contracting Officer) and forward it to the Contracting Officer or his designee to obtain a wage determination.

CLAUSE H.10 – WALSH-HEALEY PUBLIC CONTRACTS ACT

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed

\$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 6501 et seq.), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

CLAUSE H.11 – ALLOWABLE CONTRACTOR GOVERNANCE AND CONTRACT MONITORING EXPENSES

The Contractor shall annually submit, by August 31, a detailed budget estimate for the allowable costs of the Contractor's governing board activities for provisional agreement for which the Contractor's Board of Directors' execution/performance of the requirements of Section H Clause entitled "Contractor Assurance System" (if any) are separately delineated.

Costs of the Contractor's corporate activities unrelated to management of the Laboratory oversight governing board are unallowable. Direct costs of the parent entities including salaries/stipends/honorarium, including those participating as Board Members or Subcommittee Members is unallowable consistent with H.5. Staff costs, including those of the corporate parents, is allowable only for the preparation of Board Meetings and related transactions, and should be well documented in the annual budget for CO approval. The cost of travel is allowable by all Board Members and Subcommittee members for participation in Board meetings, in alignment with Federal Travel Regulations. Meetings should be held at the Laboratory facilities to the fullest extent practical. Use of any other facilities should be clearly established in the annual budget for Contracting Officer approval. FAR Part 31 cost principles apply to all actual costs incurred. Final costs for the Fiscal Year should be submitted by December 31. Costs are subject to review and approval as determined by the Contracting Officer.

CLAUSE H.12 – RESERVED

CLAUSE H.13 – FACILITIES CAPITAL COST OF MONEY

The request for proposal for this contract did not require a cost proposal in which facilities capital cost of money would apply. Therefore, the Section I Clause entitled "FAR 52.215-17 – Waiver of Facilities Capital Cost of Money" is included in the contract. However, if during the performance of the contract the Contractor elects to claim facilities capital cost of money as an allowable cost, the Contractor shall submit, for approval of the Contracting Officer, a proposal for each specific project, including Form CASB-CMF which shows the calculation of the proposed amount (see FAR 31.205-10).

CLAUSE H.14 – STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION

- (a) Use of objective standards of performance, self-assessment and performance evaluation:
- (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of goals and objectives, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.
 - (2) The Parties agree to utilize the process described within Section J, Appendix B entitled "Performance Evaluation and Measurement Plan" (PEMP) (Appendix B) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix B will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.
 - (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the contract Statement of Work and performance goals and objectives identified within Appendix B. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
 - (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the Fermi Site Office Manager.
 - (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this contract. The Office of Science, through the Fermi Site Office Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.

- (6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the process described in Appendix B. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix B that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success or failure in meeting performance expectations in a management or operating area may affect the level and/or mix of oversight attributed to a particular functional element.
- (b) Standards of performance measure review:
- (1) The Parties agree to review the PEMP elements (goals, objectives, notable outcomes, and expected levels of performance) contained in Appendix B annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, notable outcomes, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, notable outcomes and expected levels of performance and/or to modify and/or delete existing goals, objectives, notable outcomes, and expected levels of performance. It is expected that the goals, objectives, notable outcomes, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
- (2) Failure to include an objective or performance indicator in the contract Appendix B does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(2), (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision 10 days prior to issuance.

(c) DOE Quality Assurance Surveillance Plan:

DOE's Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor's performance under the contract shall consist primarily of the PEMP as called for within the Section I Clause entitled "DEAR 970.5203-1 – Management Controls". The QASP 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.

CLAUSE H.15 – CAP ON LIABILITY

- (a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses:
- (1) The Section I Clause entitled "DEAR 970.5245-1 – Property", paragraph (f)(1)(i)(C);
 - (2) The Section I Clause entitled "DEAR 970.5228-1 – Insurance--Litigation and Claims", paragraph (f); with respect to prudent business judgment only; and
 - (3) The Section I Clause entitled "DEAR 970.5228-1 – Insurance--Litigation and Claims", paragraph (g)(2); except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the Section I Clause entitled "DEAR 970.5245-1 – Property".
- (b) Unless otherwise prohibited by law or regulation, the Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one (1) fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

CLAUSE H.16 – 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 award should be American made.

CLAUSE H.17 – APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS

- (a) Performance. The Contractor will perform the work of this contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as Section J, Appendix I entitled “DOE Directives / List B”, 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. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.
- (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 Laboratory Director 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 CRD 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 by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor’s proposal.
- (e) Action of the Contracting Officer. The Contracting Officer shall within 60 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 will be made (not to exceed an additional 60 days).

- (f) Implementation and Evaluation of Performance. Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.
- (g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Section J, Appendix I entitled "DOE Directives / List B" or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within 30 calendar days, 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 by the Contractor within the 30 calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Section J, Appendix I entitled "DOE Directives / List B". The Contractor and the Contractor 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 CRD 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, in 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 CRD.

CLAUSE H.18 – EXTERNAL REGULATION

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Laboratory facilities, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and/or state and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

CLAUSE H.19 – SEPARATE ENTITY AND PERFORMANCE GUARANTEE

- (a) The work performed under this contract shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform work at Fermi National Accelerator Laboratory and shall be totally responsible for all contract activities. The separate corporate entity may be formed by a single company or it may be a business structure formed by two or more companies. This separate corporate entity shall be the Contractor.
- (b) The Contractor shall provide a performance guarantee. If the Contractor consists of more than one company, all entities comprising the separate corporate entity shall each provide a performance guarantee for joint and severable liability for the performance of the Contract. Performance guarantee(s) shall be appended to the contract in Section J, Appendix L entitled "Performance Guarantee".
- (c) In the event any of the signatories to the performance guarantee enter into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

CLAUSE H.20 – RESPONSIBLE CORPORATE OFFICIAL

The Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor separate entity performing the contract, and who is accountable for the Contractor regarding Contractor performance issues:

Name: Paul Alivisatos
Position: President
Organization: University of Chicago
Address: 5801 S. Ellis Avenue, Suite 619
Chicago, IL 60637
Phone Number: (773) 702-8001
Email Address: president@uchicago.edu

Should the responsible parent corporate official change during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

CLAUSE H.21 – EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) 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 970.3102-506, 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 and consistently applied. Periodic appraisals of contractor performance with respect to the Contractors' Total Compensation System may be conducted.

Compensation costs will be audited annually to establish final allowable cost for the reportable fiscal year. The Contractor is required to submit an adequate annual final indirect cost rate proposal in accordance with DEAR 970.5216-7. The incurred claimed costs will be initially reviewed for adequacy and then audited. Included in the scope of the audit are direct and indirect compensation costs (e.g., salaries, health benefits, pensions, etc.). Failure to adequately support the incurred costs may result in the claimed costs being disallowed in part or in its entirety.

(b) Compensation and Benefit Report

The Contractor shall provide the Contracting Officer with an Annual Compensation and Benefits Report no later than March 15th of each year.

(c) Cash Compensation

- (1) The Contracting Officer's approval of individual compensation actions will be required only for identified Key Personnel in the contract. For any Key Personnel not included in the contractors' internal Compensation Increase Plan (CIP), the approval is required upon the initial contract award, annually thereafter, and when they are replaced during the life of the contract. For all Key Personnel, besides the Laboratory Director, included in the internal CIP, approval is required upon the initial contract award and when they are replaced during the life of the contract. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract. The contractor shall not be reimbursed for the top contractor official's incentive compensation. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract when compared to subordinate compensation, which would include base salary and any potential incentive compensation under an incentive compensation agreement. 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.

(2) Severance Pay is not payable to an employee under this Contract if the employee:

- Voluntarily separates, resigns or retires from employment (unless associated with a workforce restructuring action in accordance with Appendix A, Section entitled Reductions in Contractor Employment),
- Is offered employment with a successor/replacement Contractor,
- Is offered employment with a parent or affiliated company, or
- Is discharged for cause.

(d) Pension and Other Post Retirement Benefit Programs

- (1) 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.
- (2) The Contractor shall submit for prior approval any 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. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions.
- (3) 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.
- (4) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the annual 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).

- (5) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

(e) 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.

(f) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of Defined Benefit pension plans and Post Retirement Benefit 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.

- (1) 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.
- (2) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate Plan.
- (3) 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.

- (4) 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 February 15th of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. If requested by the Contracting Officer, the Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

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

- (1) Contractors that sponsor single employer, multiple employer, or multiemployer defined benefit pension plans will be reimbursed for the annual required minimum contributions. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. For purposes of determining the minimum required contribution, the Contractor 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 approval for contributions above the minimum may submit or update a business case in advance of the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution in excess of that 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 any budget constraints are fully known.

(h) Changes to Pension and PRB Plans

No presumption of allowability will exist when the Contractor makes changes to existing pension plans or PRB plans that impact the Department's long-term liability, 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. At least sixty (60) days prior to the adoption of any 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 to 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 970.3102-506.

- (1) For proposed changes to pension plans, the Contractor shall provide the following to the Contracting Officer:
 - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
 - (C) 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;
 - (D) the Summary Plan Description; and,
 - (E) any such additional information as requested by the Contracting Officer.

(i) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

- (1) No further benefits for service shall accrue.
- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (3) 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.

- (4) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.

(j) 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) 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.
- (3) 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.
- (4) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the net asset reversion after any taxes 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.

(k) 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 Sec. 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 Reg. 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."

CLAUSE H.22 – POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

- (a) 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 FNAL (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:

- (1) 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.
 - (2) 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 spin-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.
- (b) 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 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:
- (1) Subject to subparagraph (2) 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.
 - (2) 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.

CLAUSE H.23 – CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

- (a) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

CLAUSE H.24 – ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

- (a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.
- (b) This clause allocates the responsibilities of DOE 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, compliance agreements, permits, and licenses.
- (c) (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any 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. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.

- (ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

CLAUSE H.25 – 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 (e.g., salary continuation and/or short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.
- (c) Contractors approve all workers compensation settlement claims up to \$100,000. Settlement claims above the \$100,000 require Contracting Officer 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.

CLAUSE H.26 – LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to 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) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. 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 other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.
- (e) The Contractor shall provide copies of collective bargaining agreements to the Contracting Officer as they are ratified or modified.

CLAUSE H.27 – ADDITIONAL LABOR REQUIREMENTS

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis-Bacon Act activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Laboratory shall report them to DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified

and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Laboratory shall assist DOE and/or the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

**CLAUSE H.28 – CONTRACTOR’S OBLIGATIONS CONCERNING U.S
MANUFACTURING REQUIREMENTS OF A DETERMINATION OF
EXCEPTIONAL CIRCUMSTANCES (DEC) (APR 2022)**

(a) Applicability

This clause is applicable to work performed by the Contractor subject to a Determination of Exceptional Circumstance (DEC) under 35 U.S.C. 202(a) (ii) and in accordance with 37 CFR Part 401.3(e) having U.S. manufacturing requirements.

(b) U.S. Manufacturing Requirements for Subject Inventions

- (1) In addition to the U.S. Preference provision in Patent Rights clause (48 CFR 970.5227-10 including any modifications) and the U.S. Industrial Competitiveness provision in the Technology Transfer Mission clause (48 CFR 970.5227-3 including any modifications) in the Contractor's prime contract with DOE, the Contractor agrees to comply with the manufacturing requirements of all applicable DEC's, including any remedies for breach of the applicable manufacturing requirements.
- (2) The Contractor is required to comply with requirements of applicable DEC's including, but not limited to, any U.S. Manufacturing Plans or Commercialization Plans. If the Contractor fails to comply with an applicable DEC or any related/required U.S. Manufacturing or Commercialization Plans, the Contractor is subject to any enforcement provisions of the applicable DEC, including, but not limited forfeiture of rights to subject inventions.
- (3) Request for a waiver of any U.S. manufacturing requirements, including the U.S. Preference provision in the Patent Rights clause (48 CFR 970.5227-10 including any modifications), the U.S. Industrial Competitiveness provision in the Technology Transfer Mission clause (48 CFR 970.5227-3 including any modifications), and any applicable U.S. Manufacturing or Commercialization Plan must be approved by the funding program in addition to the Contracting Officer. Such waiver requests must be accompanied by substantial evidence that it is not commercially feasible to comply with the U.S. manufacturing

requirement and provide commitments that benefit the U.S. economy. These conditions shall be binding on any subsequent assignee, sublicensee, or any entity acquiring rights to any elected subject inventions.

CLAUSE H.29 – DOE MENTOR-PROTÉGÉ PROGRAM

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall mentor at least one (1) active Protégé company at all times during the performance of this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

CLAUSE H.30 – LOBBYING RESTRICTION

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.31 – INTELLECTUAL AND SCIENTIFIC FREEDOM

- (a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of scientific, engineering, and technical work performed by Laboratory personnel.
- (c) The Parties also recognize that protecting proprietary and national security interest, information and assets is a paramount concern and duty of the Laboratory and its personnel.
- (d) In order to further the goals of the Laboratory and the national interest, as well as protect proprietary information and national security, it is agreed by the Parties that

the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open public debate and in scientific, educational, or professional meetings and conferences, subject to limitations included in technology transfer agreements, work for other agreements, and such other limitations as may be required by the terms of this contract. Nothing in this clause is intended to interfere with the obligations of the Parties, including all Laboratory personnel, to protect proprietary, classified, Privacy Act, or other sensitive information as provided for or required by law, regulation, Department of Energy Directive or Order, or elsewhere in this contract.

CLAUSE H.32 – CONFERENCE MANAGEMENT (MAR 2023)

The Contractor agrees that:

- (a) The contractor shall ensure that contractor-sponsored conferences, and contractor participation in DOE conferences sponsored by a Departmental Element, 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 shall ensure its sponsored 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 first defined by the Federal Travel Regulation (FTR) as "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404." Additionally, the Department's conference activity reporting guideline expands the FTR conference definition to disregard attendee travel as a determining factor, i.e., reporting can be required without the existence of attendee travel.
- (c) Contractor-sponsored conferences include those events that meet the Department's expanded conference definition, and a DOE contractor holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates, and conference participation.
- (d) Merely providing the contractor's facility space for a conference, or contractor staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote contractor sponsorship.
- (e) The contractor will provide information on conferences they plan to sponsor, when expected costs exceed \$100,000 in net costs to the Department, in the Department's Conference Management Tool (CMT), 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, attendee registration costs
 - 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 and approved by the corresponding federal executive oversight entity.
- (g) For DOE-sponsored conferences (i.e., sponsored by a Departmental Element), the contractor will not expend funds on the proposed conference that exceeds \$100,000 in net estimated DOE cost, until it is approved in the CMT by the management of the Departmental Element sponsoring the conference,
- 1) DOE-sponsored conferences include events that meet the Department's expanded conference definition, and a Departmental Element holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates and conference participation.
 - 2) Merely providing Federal facility space for a conference, or Federal staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote DOE sponsorship.
 - 3) The contractor will provide cost and attendance information on their participation in all DOE- sponsored conferences in the DOE Conference Management Tool.
- (h) For conferences sponsored by a non-DOE external entity, the contractor shall develop and implement a process to ensure costs related to such conferences are tracked, allowable, allocable, reasonable, and further the mission of DOE/NNSA.
- (i) Contractors are not required to enter participation or cost information on conferences sponsored by a non- DOE external entity in DOE'S Conference Management Tool.

CLAUSE H.33 – INFORMATION TECHNOLOGY ACQUISITIONS

Prior to use under this contract, all information technology shall be compliant with the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts, as appropriate, which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

CLAUSE H.34 – WORK PROGRAMS

- (a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.
- (b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.
- (c)
 - (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE's overall program goals, scientific and technological problems, and its current long range objectives. In light of such information, the Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.
 - (2) It is the responsibility of DOE to formulate overall program budgets, taking

into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.

- (3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.
- (d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:
 - (1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.
 - (2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two (2) fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two (2) fiscal years, together with a revised budget estimate for the current fiscal year.
 - (3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.
- (e) (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the Section I Clause entitled "DEAR 970.5243-1 – Changes".

- (2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds available for work under the contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries, and Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.
- (3) Additional programs and projects to be conducted at the Laboratory within the scope of the contract may be established by agreement between the DOE and the Contractor.
- (f) A contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the contract. DOE agrees to use its best efforts to provide stable funding in support of the contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.
- (g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.
- (h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract.
- (i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

CLAUSE H.35 – SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

If the contractor elects to use a Special Financial Institution Account Agreement, it shall be in accordance with DOE requirements (Financial Management Handbook, Chapter 6) and appended to the contract in Section J, Appendix C entitled “Special Financial Institution Account Agreement”.

CLAUSE H.36 – CONTRACTOR RESOURCES, COMMITMENTS AND AGREEMENTS

- (a) The resources, commitments and agreements proposed by the Contractor and accepted by the Government are incorporated into the contract as set forth in Section J, Appendix D entitled “Contractor’s Commitments”.
- (b) If the Contractor fails to provide any of the Section J, Appendix D commitments by the date(s) specified, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of the Section I Clause entitled “DEAR 970.5215-3 – Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts”.
- (c) Any costs incurred by the Contractor in providing any of these resources are expressly unallowable under the contract.

CLAUSE H.37 – ACTIVITIES DURING CONTRACT TRANSITION

- (a) The Contractor will commence Transition Activities as soon as possible after the award of the contract and complete the following activities (to the extent identified in the Contractor’s proposal) within 90 days after contract award, except as otherwise authorized by the Contracting Officer. It is currently estimated that transition activities will be completed on December 31, 2024. After completion of these activities, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the Laboratory. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the Laboratory, effective 12:01 A.M., the next day.

Activities during transition include, but are not limited to, the following:

- (1) Scientific Research. Complete the activities that will allow the Contractor to assume control of FNAL’s scientific programs and facilities.
- (2) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems {e.g., Finance, Property, Procurement,

Human Resources, Information Management, Life Cycle Asset Management, Integrated Safety Management System (including the Environmental Management System)} to assure system adequacy.

- (3) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., subcontracts, purchase orders, etc.) to be assigned to the Contractor by the Incumbent Contractor, or otherwise taken over by the Contractor.
- (4) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with the Incumbent Contractor, as stated in Section I Clauses entitled “DEAR 970.5244-1(k) – Contractor Purchasing System” and “DEAR 970.5245-1(i)(2)(ii) – Property”, in accordance with overall guidance provided by the Contracting Officer.
- (5) Litigation Management. Contractor shall consult with the Incumbent Contractor and DOE to determine whether the Contractor should assume some level of management of any litigation resulting from laboratory operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties and DOE litigation management regulations and guidelines.
- (6) Human Resources
 - (A) The Contractor will transition the workforce without break in service as operations cease under Contract No. DE-AC02-07CH11359.
 - (B) The Contractor will conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval at the end of the transition period. The Plan will identify critical-skills necessary to meet mission and contract requirements, provide a gap analysis, and outline the strategy for the recruitment and/or retention of those skills.
 - (C) If the Contractor intends to utilize “Joint Appointees”, determine how said “Joint Appointees” will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with the appointees’ home organization(s).
 - (D) Review applicable collective bargaining agreements and initiate contact with the representatives of the various unions.
 - (E) Provide to the Contracting Officer for approval, the Contractor Employee Total Compensation Plan required under the Section H

Clause entitled “Employee Compensation: Pay and Benefits”, specifically addressing:

- (i) The framework for the pension and health/welfare benefits applicable to the transferring workforce, with assessments in the form of a Benefit Value Study and Cost Comparison Survey, as described under the Section H Clause entitled “Employee Compensation: Pay and Benefits”, demonstrating comparability of value and cost relative to the pension and benefits provided by the Incumbent Contractor (Fermi Research Alliance, FRA). Guidance on acceptable Benefit Value and Cost Comparison tools will be provided by the Contracting Officer.
 - (ii) The framework of the total compensation package applicable to new hires under the contract.
 - (F) Determine the strategy for meeting the requirements identified in Section H Clause entitled “Employee Compensation: Pay and Benefits” pertaining to pensions.
 - (G) If desired, propose an incentive compensation strategy for “Key Personnel,” other management personnel, and other employees, as appropriate.
 - (H) Initiate the change in sponsorship of benefit programs, as applicable.
 - (I) Initiate analysis of workers’ compensation program relative to FNAL liabilities.
- (b) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor’s “Key Personnel,” as described in its Cost Proposal, at an allowable cost not to exceed \$5,537,375. The Contractor’s transition costs shall be separately accounted for and maintained after the transition period. In the event the actual cost of said activities exceeds such amount, including any costs for relocation of Contractor’s “Key Personnel” incurred after the conclusion of the transition period, Contractor agrees that it will be solely responsible for costs greater than said amount.
- (c) If the Contractor determines that it wishes to participate in the Department’s Non-Federal Agreements for Commercializing Technology (ACT) program, the Contractor shall prepare and submit to the Contracting Officer its request with implementing procedures as early as possible to ensure continuity of the program.

CLAUSE H.38 – WORKFORCE TRANSITION

- (a) Hiring Preference. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees in “Regular”, “Fixed-Term”, or “Temporary” appointments, as defined in (c), below, who, as of the date the Contractor assumes responsibility for the contract, are in good standing and are engaged in performance of work within the scope of work under this contract. Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee’s performance or conduct.
- (b) Discretionary Incumbent Management Employees Excepted. It is the Contractor’s prerogative to establish its own management structure. Therefore, the hiring preference set forth in paragraph (a) above is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals assigned to Key Personnel positions as listed in Contract No. DE-AC02-07CH11359, in Section J, Appendix entitled “Key Personnel” as of the date of release of the RFP, including any subsequent changes of these personnel after release. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor’s sole discretion. For those Key Personnel positions listed in Contract No. DE-AC02-07CH11359, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
- (c) Incumbent Employees.
- **Regular employees** are not in a temporary status and are regularly scheduled to work.
 - **Fixed Term employees** are hired to temporarily work on short- or long-term assignments for a limited duration generally up to a maximum of three years. Term assignments may be continued for one additional extension period.
 - **Seasonal employees** are hired to work generally during the summer months or holiday season to supplement the workforce. One type of seasonal employee is an **Intern employee** hired to perform work for a specific internship program, generally during the summer months
 - **Temporary employees** are hired to temporarily work for a limited duration generally up to a maximum of six months. One type of temporary employee is a **Co-op employee** hired to work three or four terms at Fermilab, alternating periods of full-time study at their schools with full-time employment at the laboratory.
 - **On-call employees** are employed on an “as-needed” basis for a non-specified period. On-call employees must work less than 1,000 hours per year.
 - **Full-time employees** are regularly scheduled to work at least 40 hours per week.
 - **Part-time employees** are regularly scheduled to work less than 40 hours but at least 20 hours per week.

CLAUSE H.39 – MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

CLAUSE H.40 – NO THIRD-PARTY BENEFICIARIES

This contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

CLAUSE H.41 – PROHIBITION OF FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS

The Contractor agrees that:

- (a) No cost associated with implementation of enforcement or nondisclosure policies, forms, or agreements shall be allowable under this contract if such policies, forms, or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights or liabilities created by existing statute or Executive Order relating to (1) classified information (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling."
- (b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement

shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or Department of Justice, that are essential to reporting a substantial violation of law.

CLAUSE H.42 – RISK MANAGEMENT AND INSURANCE PROGRAMS

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the contractor has established separate operating business units.

1. Basic Requirements

- a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.
- b. 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).
- c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.
- d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
- e. The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.

- g. Ensure self-insurance programs include the following elements:
- (1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased 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 requirements of FAR 28.308, as applicable.
 - (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
 - (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
 - (4) Accounting of self-insurance charges.
 - (5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
 - (a) The claims reserve 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 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 justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
 - (d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
- h. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

- i. Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

2. Plan Experience Reporting

The Contractor shall:

- a. Provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:
 - (1) The amount paid for each claim.
 - (2) The amount reserved for each claim.
 - (3) The direct expenses related to each claim.
 - (4) A summary for the year showing total number of claims.
 - (5) A total amount for claims paid.
 - (6) A total amount reserved for claims.
 - (7) The total amount of direct expenses.
- b. 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 (e.g., those claims valued at \$100,000 or greater).
- c. Provide additional claim financial experience data as may be requested on a case-by-case basis.

3. Terminating Operations

The Contractor shall:

- a. Ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
- b. Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.

- c. Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.
 - 4. Successor Contractor or Insurance Policy Cancellation
- The Contractor shall:
- a. Obtain the written approval of the Contracting Officer for any change in program direction; and
 - b. Ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

CLAUSE H.43 – EAct DATA PROTECTION (APR 2022)

(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 (EAct 2005) or the Energy Policy Act of 1992 (EAct 1992), the Contractor may, with the concurrence of DOE, claim and mark as EAct 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 "EAct 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 EPC Act 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.

CLAUSE H.44 – REAL PROPERTY ASSET MANAGEMENT

- (a) The Contractor shall 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. Contractors shall meet these functional requirements through tailoring of their 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. Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property.
- (b) Contractor shall:
 - (1) Submit all real estate actions to acquire, utilize, and dispose of real property assets to DOE for review and approval and maintain complete and current real estate records.
 - (2) Perform physical condition assessments on each real property asset at least once every five-year period or other risk-based interval as approved by SC-1 based on industry leading practices, voluntary consensus standards, and customary commercial practices.
 - (3) Perform functional assessments on each operating real property asset at least once every five-year period or other risk-based interval as approved

by SC-1 based on industry leading practices, voluntary consensus standards and customary commercial practices. The outcome of these assessments must identify a list of modifications that the asset needs in order to remain functionally adequate to support the mission as well as the costs to implement those modifications (i.e., Modernization Costs).

- (4) Establish a maintenance management program including: 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 or repair needs (RN) and Deferred Maintenance and Repair (DM); 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.
- (5) Maintain Facilities Information Management System (FIMS) data and records for all lands, buildings, trailers, and other structures and facilities. FIMS data must be current and verified annually.

CLAUSE H.45 – DISPOSAL OF REAL PROPERTY

Disposal of any permanent or temporary interest in real property shall require the prior approval of the Contracting Officer.

CLAUSE H.46 - 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.