

**PART I
SECTION H**

SPECIAL CONTRACT REQUIREMENTS

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SPECIAL CONTRACT REQUIREMENTS

CLAUSE H.1 - LABORATORY FACILITIES

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

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Fermi National Accelerator Laboratory Site in DuPage and Kane Counties, Illinois; and
- (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.
- (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.

CLAUSE 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) Strategic planning. The Contractor shall develop a Strategic Plan covering a five-year period, which will be updated annually. Development of the Fermilab Strategic Plan is a component of 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 period covered by the plan. The Fermilab Strategic Plan approved by the DOE Site Office Manager provides guidance to the Contractor for long-range planning of Laboratory programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.

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

CLAUSE H.3 - WORK AUTHORIZATION

- (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 fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two 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 clause of the Contract entitled "Changes".

- (2) The Work Authorizations/Annual Program Letters, and with respect to work 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 the work 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.4 - 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 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:

I. ITEMS OF ALLOWABLE COSTS:

- (a) Personnel costs in accordance with Appendix A attached to this contract.
- (b) Costs for the defense and indemnification of employees in accordance with the provisions of Clause H.37.
- (c) 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 as set forth in Part III, Attachment J.7, Appendix G.
- (d) Notwithstanding the provisions of FAR cost principle 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.
- (e) Notwithstanding the provisions of FAR cost principle 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.
- (f) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.
- (g) Net costs for the Fermilab swimming pool.

II. ITEMS OF UNALLOWABLE COSTS:

- (a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- (b) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the Contracting Officer.

CLAUSE H.5 - 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

"Description/Specifications/Work Statement" 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 the clause of this contract entitled, "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 fee base contained in Part I, Clause B.3 (e)(2). 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 contract clause entitled, "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.6 - 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 Clause I.16B, 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.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:

Personnel Medical Records (DOE-33) (excepting Contractor employees)

Personnel Radiation Exposure Records (DOE-35) (respecting Contractor employees, DOE and, visitors to the Contract Site)

Employee and Visitor Access Control Records (DOE-51)

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) "CH" means the DOE Office of Science, Chicago Office.
- (b) "Contractor" means the Offeror as specified in Block 15A of Standard Form 33 for Contract No. DE-AC02-07CH11359.
- (c) The term "DOE" means the Department of Energy, "FERC" means the Federal Energy Regulatory Commission, and "NNSA" means the National Nuclear Security Administration.
- (d) 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.

- (e) “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.
- (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 the Government-owned land (hereinafter referred to as the “Laboratory Site”) at Batavia, Kane and DuPage Counties, Illinois.
- (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) With respect to Clauses H.15, I.110, and I.129, the term “nonprofit Contractor” 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 DOE:

Department of Energy – Director, Office of Procurement and Assistance Management,
DOE;

National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and

Federal Energy Regulatory Commission – Chairman, FERC.
- (j) Reserved.

CLAUSE H.9 - SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 6701)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with Clause I.128 – DEAR 970.5244-1 – CONTRACTOR PURCHASING SYSTEM (AUG 2016)(DEVIATION: PF 2015-17) (SC ALTERNATE) (APR 2018), subcontracts awarded by the Contractor are subject to the Act 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 Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A “Notice of Intention to Make a Service Contract” and forward it to the Contracting Officer or his designee to obtain a wage determination.

CLAUSE H.10 - WALSH-HEALY 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 \$10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 6501), 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 allowable costs reimbursed under Clause I.117, Payments and Advances, of this contract shall include costs incurred by the Board of Directors and shall be determined as follows:

Commencing October 1, 2008 the Contractor shall be provided funds each fiscal year to reimburse the allowable costs (which may include such types as staff costs, honoraria and meeting expenses) resulting from the contract management oversight activities of the Board of Directors. At least 60 days before the beginning of each fiscal year, the Contractor shall submit to the Contracting Officer a detailed budget estimate for the allowable costs of such activities for the ensuing year. The amount each year shall be a provisional amount agreed upon by the Parties after review of the annual budget. During each year the Parties may agree upon changes regarding the approved annual budget. Any costs incurred by the Contractor for the Board of Directors in excess of the mutually agreed to provisional amount shall be unallowable unless the Contracting Officer approves such increased amount, in writing. The Contractor shall submit a detailed report of all expenditures as soon as possible but no later than 120 days following the end of each fiscal year. Any amounts received provisionally for the completed year and not so spent shall be refunded to the DOE, or, if the Parties so agree, carried forward as an offset against the provisional allowable costs for the succeeding fiscal year. A certification signed by an individual of the Fermi Research Alliance LLC, at a level no lower than a Vice President or Chief Financial Officer, shall be provided stating that the costs incurred contain no unallowable costs. Appropriate documentation, including a detailed

agenda, list of attendees, topics of discussion, and a Statement indicating that meals provided to the Board of Directors are incidental to and an integral part of the conference or meeting shall be available to DOE and provided in the annual detailed report of expenditures. Actual allowable costs may be charged to the contract as incurred during each fiscal year.

CLAUSE H.12 – 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.13 – 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.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 objective performance goals and indicators, 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 Part III, Section J, Appendix B - "Performance Evaluation and Measurement Plan" (PEMP) 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 indicators identified within Part III, Section J, 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 organizations, 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 DOE 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 DOE 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., OIG, GAO, DCAA, etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent or no review of the functional area. Conversely, marginal performance or "for cause"

situations may result in more frequent reviews.

- (b) Standards of performance measure review:
 - (1) The Parties agree to review the PEMP elements (goals, objectives, measures, targets, 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, measures and targets, for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, measures and targets, and/or to modify and/or delete existing goals, objectives, measures and targets. It is expected that the goals, objectives, measures and targets, 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 a goal, objective, measure or target 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)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance.

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 - 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 important 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 the scientific, engineering, and technical work performed by Laboratory personnel.
- (c) In order to further the goals of the Laboratory and the national interest, 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 debate and in scientific, educational, or professional meetings or conferences, subject to the limitations included in technology transfer agreements and such other limitations as may be required by the terms of this Contract. Nothing in this clause is intended to alter the obligations of the Parties to protect classified or unclassified controlled nuclear information as provided by law.
- (d) Nothing in the Section I clause entitled "Public Affairs" or the Section H clause(s) respecting "Lobbying Restriction (Energy and Water Act)" are intended to limit the rights of the Contractor or its employees to publicize and to accurately state the results of its scientific research.

CLAUSE H.17 - 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.18 - 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 "Appendix I," 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 sixty (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 Appendix I or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within thirty (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 thirty (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 Appendix I. 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.19 - 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, the Environmental Protection Agency, 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.20 - SEPARATE CORPORATE ENTITY AND PERFORMANCE GUARANTEE

- (a) The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.
- (b) The Contractor's parent organization(s) or all member organizations, shall guarantee the Contractor's performance as evidenced by the Performance Guarantee(s) incorporated in the contract in Section J, Appendix L. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the contract.
- (d) In the event any of the signatories to the performance guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

CLAUSE H.21 - EMPLOYEE COMPENSATION: PAY AND BENEFITS

- (a) Contractor Employee Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services". DOE-approved standards, if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Periodic appraisals of contractor performance with respect to the Contractors' Total Compensation System will be conducted. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

(1) The description of the Contractor Employee Compensation Program should include the following components;

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

(b) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts and planned distribution of funds for the following year.
- (2) A list of the top five most highly compensated contractor employees and their total cash compensation as defined in FAR 31.205-6(p)(1)(i) at the time of Contract award, and at the time of any subsequent change to their total cash compensation no later than March 1st of each year.

Section 702 of the Bipartisan Budget Act of 2013 (BBA; Pub. L. 113-67, December 26, 2013) establishes a cap on the reimbursement of compensation costs for contractor employees, adjusted annually to reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics (BLS).

- (3) An Annual Compensation and Benefits Report no later than March 15th of each year.

(c) Pay and Benefit Programs

The Contractor shall maintain pay and benefit programs for its employees; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Cash Compensation

- (A) The Contractor shall submit the following, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
- (i) Any proposed major compensation program design changes prior to implementation.
 - (ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.
 - (iii) A Compensation Increase Plan (CIP). A Contractor that meets the criteria, as set forth below, is not required to submit a CIP request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund unless Departmental policy exists to the contrary (e.g. Secretarial Pay freeze):
 - 1. The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed the mean WorldatWork promotional increases projected for the CIP year and communicated through the annual Department CIP guidance
 - 2. The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
 - 3. Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.

Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories.

- (iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability, unless the Contracting Officer, in accordance with subparagraph (m) obtains an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or an independent public accounting firm under the DOE contract for such services. Otherwise, the CIP should include the following components and data:
 - (1) Market analysis summary, including a comparison of average pay to

market average pay.

- (2) Information regarding surveys used for comparison.
 - (3) Aging factors used for escalating survey data and supporting information.
 - (4) Projection of escalation in the market and supporting information.
 - (5) Information to support proposed structure adjustments, if any.
 - (6) Analysis to support special adjustments or promotions that exceed the 1% Promotion/Adjustment fund authorized under Section 3, titled Compensation of Appendix A.
 - (7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt). (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
 - (8) A discussion of the impact of budget and business constraints on the CIP amount.
 - (9) Comparison of pay to relevant factors other than market average pay.
 - (10) Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts.
- (v) The Contractor may make, without CO Approval, minor shifts of merit funds between Merit and Promotion/Adjustment funds after approval of the CIP or if criteria under (c)(1)(A)(iii) was met, in order to meet the compensation requirements of its organization, subject to the following guidelines:
1. Minor shift is defined as up to 25% of the specific fund from which funds are being transferred, the contractor may, with CO approval, shift additional funds in justified instances.
 2. Contractors will notify the Contracting Officer that funds have been shifted.
- (vi) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the

initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).

(B) The Contracting Officer's approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (c)(1)(A)(vi) above. 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.

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

- (i) 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)
- (ii) Is offered employment with a successor/replacement Contractor,
- (iii) Is offered employment with a parent or affiliated company, or
- (iv) Is discharged for cause.

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

(d) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval any benefit plan changes not associated with pensions that result in increases in costs if the value of the change is \$250,000 or greater. Notification is only necessary for those benefit plan changes (excluding pension and postretirement benefit changes) valued at \$250,000 or less. The Contractor shall submit for prior approval benefit changes that result in increases to the Department's long-term pension and other actuarial liabilities that are reported in the Department's financial statement and increases in other benefits such as paid time off, insurance and employer contributions for defined contribution pension plans regardless of dollar value. Examples of benefits changes that increase the

Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions. Any changes made by the Contractor shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

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

- (4) When the net benefit value exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.
 - (5) When the benefit costs as a percent of payroll exceed the comparator group by more than the percentage threshold established by the Head of the Contracting Activity, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer.
 - (6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and cost as percent of payroll in accordance with its corrective action plan.
 - (7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
 - (8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
 - (9) Each Contractor sponsoring a Defined Benefit pension plan and/or postretirement benefit plan will participate in the 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 (f)(6) below for Pension Management Plan requirements).
 - (10) 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 pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

- (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) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

- (3) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate Plan.
- (4) 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.
- (5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
- (6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no

later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

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

- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.
- (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(h) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

- (1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.
- (2) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(i) Changes to Pension and PRB Plans

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

- (1) For proposed changes to pension plans and pension plan funding, 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.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable [see (d)(1) above]. The justification must:
 - (A) demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs, H-28

- (B) provide the dollar estimate of savings or costs, and
- (C) provide the basis of determining the estimated savings or cost.

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

(k) Terminating Plans

- (1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
- (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
- (3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
- (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.

- (5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the contractor may stipulate to a schedule of payments.

(l) Special Programs

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

(m) Alternate Contractor Human Resource Requirements

(1) Alternatively, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE); if the Contracting Officer does, the Contractor will not be required to submit the:

- (A) Compensation Increase Plan; and/or
- (B) Employee Benefits Cost Study.

(n) 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.21A-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.21B - RESPONSIBLE CORPORATE OFFICIAL

The Government may contact as necessary, the Chairman of the Parent Organization(s) Board of Directors, Trustees or any other Management Board regarding Contractor performance issues.

For each such official, the Contractor shall provide the following information:

Name: Robert Zimmer
Position: President
Organization: University of Chicago
Address: 5801 S. Ellis Avenue, Chicago, IL 60637
Phone Number: (773) 702-8001

Should a responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government, in writing, of the change in the individual(s) to contact.

CLAUSE H.21C - 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 Fermi National Accelerator Laboratory (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 spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. 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.
- (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.22 - 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.23 - 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.
 - (i) 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.24 - WORKERS' COMPENSATION

- (a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- (b) Workers compensation loss income benefit payments, when supplemented by other programs (such as salary continuation, short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 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.25 – 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.
- 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 and functional utilization assessments on each real property assets at least once every five-year period or at another risk-based interval as approved by SC-1 based on industry leading practices, voluntary consensus standards, and customary commercial practices.
3. 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 as either deferred maintenance and repair (DM) or repair needs; management of the DM backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.
4. 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.26 - 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 activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Contractor shall report them to the 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 Contractor 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.27 - RESERVED

CLAUSE H.28 - RESERVED

CLAUSE H.29 - PERFORMANCE BASED MANAGEMENT AND OVERSIGHT

- (a) Performance-based management shall be the key enabling mechanism for establishing the DOE-Contractor expectations on oversight and accountability. DOE expectations (outside of individual program performance and requirements of laws and regulations) and performance targets shall be established through the Performance Evaluation and Measurement Plan (PEMP) pursuant to the clause entitled "Standards of Contractor

Performance Evaluation”. This PEMP shall establish the expected strategic results in the areas of mission accomplishment, stewardship and operational excellence. Mission performance goals shall be established by agreement with each major customer of the Laboratory, and customer evaluation will be the primary means of evaluating mission performance. Stewardship and operational goals shall be established by agreement with DOE. Contractor self-assessment, third party certification, and Contractor and DOE independent oversight, as appropriate, shall be the primary means for assessing stewardship and operational performance. Routine DOE oversight of Contractor performance will be conducted at the systems level.

- (b) The performance-based management system shall be the primary vehicle for addressing issues associated with performance expectations. In the event of a substantive performance shortfall in any area, the appropriate improvement expectations and targets will be incorporated into the PEMP and tracked through self-assessment and independent oversight, as appropriate.
- (c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external regulators in assessing Contract compliance. DOE oversight will be achieved through periodic assessments at the management system level, including review of Contractor self-assessments and assessments by independent third parties.

CLAUSE H.30 – LOBBYING RESTRICTION (CONSOLIDATED APPROPRIATIONS ACT, 2015)

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 - 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 active Protégé company at all times during the performance on this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

CLAUSE H.32 - RESERVED

CLAUSE H.33 - RESERVED

CLAUSE H.34 - RESERVED

CLAUSE H.35 - RESERVED

CLAUSE H.36 - RESERVED

CLAUSE H.37 - 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 Section I clause entitled 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 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:
- (e) 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.38 - 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.39 – RESERVED

CLAUSE H.40 - RESERVED

CLAUSE H.41 - 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 Contractor. This requirement shall be included in all subcontracts, as appropriate, which are for information technology acquisitions; and the Laboratory Chief Information Officer shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

CLAUSE H.42 - ACTIVITIES DURING CONTRACT TRANSITION (SPECIAL)

- (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 sixty (60) days, after contract award, except as otherwise authorized by the Contracting Officer. It is currently estimated that transition activities will be completed by December 31, 2006. 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.
- (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, Information Management, Life Cycle Asset Management, Integrated Safety Management System [including the Environmental Management System], Human Resources) 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 Universities Research Association, Inc., or otherwise taken over by Contractor. Initiate the assumption of said responsibility with the objective of being eighty-five percent (85%) complete by the end of the transition period.
 - (4) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with the Universities Research Association, Inc., see Clause I.129 (i)(2)(ii), in accordance with overall guidance provided by the Contracting

Officer.

- (5) Litigation Management. Contractor shall consult with the Universities Research Association, Inc. and DOE to determine whether 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, relevance of retrospective insurance, and DOE litigation management guidelines.
- (6) Human Resources
 - (A) The Contractor will transition the workforce without break in service as operations cease under Contract DE-AC02-76CH03000.
 - (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 the status of critical-skills and the strategy for the recruitment and/or retention of those skills, and specifically address the issues set forth below.
 - (i) If the Contractor intends to utilize “Joint Appointees” with educational institutions; how said “Joint Appointees” will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with the educational institutions.
 - (ii) Incentive compensation strategy for “Key Personnel,” other management personnel, and other employees, as appropriate, that meets the criteria of the DOE Acquisition Guide, Chapter 70.5, which can be located on the internet at <http://professionals.pr.doe.gov> and DOE Order 350.1.
 - (iii) The terms and conditions of employment that will be applicable to the bargaining unit workforce, demonstrating consistency with the respective collective bargaining agreements previously providing coverage.
 - (iv) The following will be specifically addressed under the *Human Resources Compensation Plan*, required to be submitted within 30 days of Contract award, pursuant to H.21(b)(7):
 - (a) The framework for the pension and health/welfare benefits applicable to the transferring workforce, with an assessment of the benefit value relative to those provided by the Universities Research Association, Inc. for FNAL employees.
 - (b) A framework of the total compensation package applicable to

new hires under the contract.

Except as provided in paragraph (c) below, or as otherwise specifically agreed to by the Contractor and the Contracting Officer, all of the provisions of this contract shall apply to the Contractor's performance of Transition Activities.

(c) The following contract articles or portions thereof as noted below do not apply to the Contractor's Transition Activities:

- (1) Clause C.4 - Statement of Work;
- (2) Clause F.1 - Period of Performance, except that pertaining to the Transition Period;
- (3) Clause H.1 - Laboratory Facilities;
- (4) Clause H.2 - Long-Range Planning, Program Development and Budgetary Administration;
- (5) Clause H.14 - Standards of Contractor Performance Evaluation;
- (6) Clause H.15 - Cap on Liability;
- (7) Clause H.22 - Contractor Acceptance of Notices of Violations or Alleged Violations, Fines, and Penalties;
- (8) Clause H.23 - Allocation of Responsibilities for Contractor Environmental Compliance Activities;
- (9) Clause I-11 - Required Sources for Helium and Helium Usage Data;
- (10) Clause I.93 - Total Available Fee: Base Fee Amount and Performance Fee Amount;
- (11) Clause I.94 - Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts;
- (12) Clause I-95 - Work for Others Program (Non-DOE Funded Work);
- (13) Clause I.115 - Preexisting Conditions;
- (14) Clause I.121 - Work for Others Funding Authorization;

(15) Appendix B - Performance Evaluation and Measurement Plan;

- (d) 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 \$907,215.00. 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.

CLAUSE H.43 - SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

The Contractor agrees to procure, in accordance with DOE requirements and direction, a new Special Financial Institution Account Agreement in sufficient time to have said Agreement in place and effective as of January 1, 2007.

CLAUSE H.44 - AGREEMENTS AND COMMITMENTS

- (a) The resources proposed by the Contractor and accepted by the Government are incorporated into the contract as set forth below:

The Contractor shall provide the above described resources in the amount, manner, and schedule as specified below:

The Contractor has committed to provide \$12,113,000 in financial obligations in the performance of this Contract. Details of the commitments are set forth in Section J.4, Appendix D – Contractor Commitments.

The Contractor shall provide the above described resources in the amount, manner, and schedule as specified in Contractor's response to Provision L.8 of RFP No. DE-RP02-06CH11359. If the Contractor fails to provide any and all of these resources or to make progress toward providing these resources, 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, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts."

- (b) Any costs incurred by the Contractor in providing any of these resources are expressly unallowable under the contract.

CLAUSE H.45 - 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.46 – CONFERENCE MANAGEMENT

The Contractor agrees that:

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

b) Determination of a Conference.

(1) Definition. "Conference" is defined in the Federal Travel Regulation 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. However, this definition is only a starting point. What constitutes a conference for the purpose of this guidance is a fact-based determination based on an evaluation of the criteria established in this attachment.

2) Additional Indicia of Conferences. Conferences subject to this guidance are also often referred to by names other than "conference." Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indications of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as conferences without meeting all of the indicia listed above, but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.

3) Local Conferences. Events within the local duty location that do not require advance travel authorization may also qualify as a conference for the purposes of this guidance if the event exhibits other key indicia of a conference, especially the payment of a registration, exhibitor, sponsor, or conference fee.

4) Exemptions. For the purposes of this guidance, the exemptions below apply and these types of activities should not be considered to be conferences even if the event meets the general definition of conference in section 1 above. Even where an event is considered exempt for this guidance, organizations are expected to continue to apply strict scrutiny to DOE's participation to ensure the best use of government funds and adherence with not only all applicable laws and policy, but the underlying spirit or principles, include ensuring that only personnel attend events that have a mission-essential need to do so, that expenses be kept to a minimum, and that participation in any associated social events be limited and restrained to the greatest degree practicable to avoid the appearance of impropriety. Exemptions from this guidance should be granted sparingly and only when events fully meet the definition and intent of the criteria below:

i) Meetings necessary to carry out statutory oversight functions. This exemption would include activities such as investigations, inspections, audits, or non-conference planning site visits.

ii) Meetings to consider internal agency business matters held in Federal facilities. This exemption would include activities such as meetings that take place as part of an organization's regular course of business, do not exhibit indicia of a formal conference as outlined above, and take place in a Federal facility.

iii) Bi-lateral and multi-lateral international cooperation engagements that do not exhibit indicia of a formal conference as outlined above that are focused on diplomatic relations.

iv) Formal classroom training which does not exhibit indicia of a formal conference as outlined above.

v) Meetings such as Advisory Committee and Federal Advisory Committee meetings, Solicitation/Funding Opportunity Announcement Review Board meetings, peer review/objective review panel meetings, evaluation panel/board meetings, and program kick-off and review meetings (including those for grants and contracts).

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

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

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

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

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

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

e) The Contactor will approve at the level of the Laboratory Director or Chief Operating Officer, conferences they plan to sponsor with expected costs exceeding \$100,000. The following information will be available to DOE upon request:

1) Conference title, description, and date;

2) Location and venue;

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

- 4) Description of contracting procedures used (e.g., competition for space/support);
- 5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees); and
- 6) Number of attendees.

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

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

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

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

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

3) The Contractor will provide cost and attendance information on their participation in all

DOE-sponsored conference in the DOE Conference Management Tool.

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

1) Track all conference expenses; and

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

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

CLAUSE H.47 – (DOE-H-2073) 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.48 – MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (NOV 2017)(AL 2018-04)

(a) Definitions. As used in this clause—

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

“Management and Operating Contractor Subcontract Reporting Capability (MOSRC)” means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

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

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

H.49 Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state.

(a) The Contractor may submit for reimbursement and the Government will treat as allowable (if otherwise allowable per federal regulations) the costs of paid leave (including sick leave) the Contractor or its subcontractors provide to keep employees in a ready state if--

(1) The employees: cannot perform work on a site approved by the Federal Government (including a federally-owned or leased facility or site) due to facilities closures or other restrictions; and cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID–19.

(2) The costs are incurred from January 31, 2020 through September 30, 2021.

(3) The costs do not reflect any amount exceeding an average of 40 hours per week for paid leave.

(b) Where other relief provided for by the CARE Act or any other Act would benefit the contractor or the contractor's subcontractors, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act, the contractor should evaluate the applicability of such benefits in seeking reimbursement under the contract.

(c) The Contractor must represent in any request for reimbursement--

(1) Either it: has not received, has not claimed, and will not claim any other reimbursement, including claims for reimbursement via letter of credit, for federal funds available under the CARES Act for the same purpose, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act; or if it has received, claimed, or will claim other reimbursement, that reimbursement has been reflected, or will be reflected when known, in requests for reimbursement but in no case reflected later than in its final proposal to determine allowable incurred costs.

(2) Its request reflects or will reflect as soon as known, all applicable credits, including

(i) Tax credits, including credits allowed pursuant to division G of Public Law 116-127; and

(ii) Applicable credits allowed under the CARES Act, including applicable credits for loan guarantees.

CLAUSE H.50 – EPAct 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 (EPAct 2005) or the Energy Policy Act of 1992 (EPAct 1992), the Contractor may, with the concurrence of DOE, claim and mark as EPAct Protected Data, any data first produced in the performance of such work that would have been treated as a trade secret if developed at private expense. Any such claimed "EPAct Protected Data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraph (b) of this clause.

Protected Rights Notice

These protected data were produced under **[INSERT WORK IDENTIFIER]** with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until **[INSERT PERIOD OF PROTECTION END]** (Note: The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized

maximum), unless express written authorization is obtained from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

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

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

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

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

(i) At the end of the protected period;

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

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

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

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

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

Strategic Partnership Project (SPP) is used with an EPAct Awardee, the Rights in Technical Data clause may be modified to incorporate the Protected Rights Notice of this clause.

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

(b) Unauthorized or Omitted Marking of Data

(1) Notwithstanding any other provisions concerning inspection or acceptance, if any data developed is authorized by EPAct 1992 or 2005 bears any restrictive or limiting markings not authorized by this clause, the Contracting Officer has the right to remove, cancel, correct, or ignore any markings not authorized by this clause on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the Contractor of the action taken.

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

(End of Clause)

CLAUSE H.51 – 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 to 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.

(End of Clause)