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Part I - Section B - SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED (Mod 196)

(a) The Offeror (also referred to herein as "Contractor") shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to providing its best efforts to effectively, efficiently and safely manage and operate the Lawrence Livermore National Laboratory (hereinafter "the Laboratory" or "LLNL") for the U.S. Department of Energy (DOE) National Nuclear Security Administration (NNSA).

(b) With respect to those portions of the real property (including fixtures) identified in Part III, Section J, Appendix B, the Contractor's rights and responsibilities under this Contract extend only to the provision and maintenance of security, utilities, roads and other rights of way, and fire protection for such property pursuant to the land management policies, rules and guidelines of the DOE. Contractor's personnel shall go onto such property solely to provide such services, except as needed to obtain access to the laboratory. Contractor acts solely in the capacity of a custodian with respect to such property. The use of such property resides solely in the discretion of the Government, and such property and other structures thereon shall remain vacant and unoccupied during the term of this Contract unless otherwise specified in the Contract or other direction provided by the Contracting Officer. The Contractor shall not sublease, rent or otherwise designate any third parties to use such property except for third parties to whom Contractor may subcontract Contractor's property maintenance functions described above. The Contractor shall not use such property for the performance of its other duties under this Contract, or construct of place any structures or fixtures thereon or otherwise develop such property without obtaining the prior written consent of the Contracting Officer.

(c) NNSA directed the Contractor to proceed with the "one site/two laboratory" strategic tasking whereby Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratories (SNL-CA examine each other's laboratory operations for joint operations opportunities to produce a more efficient and effective operations but not necessarily cost savings. In addition to the requirements of paragraph (b) above, the real property (including fixtures) identified in Part III, Section J, Appendix B is expanded to include the SNL-CA site only, the Contractor's rights and responsibilities at the SNL-CA site extend only to the provisions approved by the Contracting Officer as part of the "one site/two laboratory" strategic tasking.

(d) As used in this clause, "nuclear materials" means source material, special nuclear material, and other materials to which DOE Directives regarding the control of nuclear materials apply. The Contractor shall, in a manner satisfactory to the Contracting Officer and in accordance with DOE Directives, establish and maintain a materials management program, establish according and measurement

procedures, maintain current records, and institute appropriate control measures for nuclear materials in its possession commensurate with the national security and applicable DOE Directives. Except as otherwise authorized by the Contracting Officer, nuclear materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this Contract. The Contractor shall include in every subcontract involving the use of nuclear material for which the Contractor has accountability, appropriate terms and conditions for the use of nuclear materials and the responsibilities of the subcontractor regarding control of nuclear materials. DOE recognizes that, with respect to the real property (including fixtures) identified in Part III, Section J, Appendix B, which are used in conjunction with the control of "nuclear materials," the Contractor's sole role is limited to complying with national security and applicable DOE Directives concerning their storage and control.

B- 2 CONTRACT TYPE AND VALUE (Mod M053, M107, 196, 232, 241,258, 300, 363, 388, 466, 484, 502, 542, 550, 577, 619, 631, 652, 684, 694,712,715, 720, 723, 745, 755, 760, 785, 793, 801, 824, 833, 845, 877, 885, 904)

(a) This Contract is a Cost-Reimbursement Management and Operating type contract that includes a Fixed Fee and a Performance Incentive Fee for the Basic Term of the Contract and the Award Term earned periods. Fee is associated with the DOE/NNSA work and Reimbursable work. DOE/NNSA Work as used herein is the work performed by the Contractor that is funded out of the Laboratory's Table included in the President's annual budget request for LLNL. As of Nov 21, 2024 (Mod 877), reimbursable work as used herein is the work performed by the Contractor for a customer other than DOE or NNSA.

As of Nov 21, 2024 (Mod 877), the fee base for DOE/NNSA Work shall not be reduced for any outgoing intercompany purchases including, but not limited to, inter-entity work orders, Integrated Contractor Order, Memorandum Purchase Order, Integrated Contractor Requisitions, or cash orders to other DOE or NNSA contractors. Similarly, the fee base for DOE/NNSA Work shall not be increased for any incoming intercompany purchases including, but not limited to, inter- entity work orders, Integrated Contractor Order, Memorandum Purchase Order, Integrated Contractor Requisitions, or cash orders from other DOE or NNSA contractors.

(b) Contract's Transition Term

(1) The Transition Term of the Contract is:

Transition Term of the Contract	Final Cost
09May07 – 30Sep07	$10,097,436.78

(2) The Transition Term effort shall be performed on a Cost-Reimbursement, no fee basis. The Transition Period is now closed. Final cost and payment was made on Modification 206.

(c) Total Estimated Cost, including Fee, for the Contract's Basic Term related to the DOE/NNSA work effort, excluding Reimbursable work.

(1) The Total Estimated Cost, including fee, for the DOE/NNSA work effort, excluding Reimbursable work, for the Basic Term of the Contract is:

Basic Term of the Contract	**Total Estimated Cost and Fee**
01Oct07 – 30Sep08	$1,260,000,000
01Oct08 – 30Sep09	$1,260,000,000
01Oct09 – 30Sep10	$1,260,000,000
01Oct10 – 30Sep11	$1,260,000,000
01Oct11 – 30Sep12	$1,260,000,000
01Oct12 – 30Sep13	$1,260,000,000
01Oct13 – 30Sep14	$1,260,000,000

(2) The Maximum Available Fee related to the DOE/NNSA work effort, excluding Reimbursable work, for the Basic Term of the Contract is:

Contract Period	**Maximum Available Fee**
01Oct07 – 30Sep08	$45,542,169
01Oct08 – 30Sep09	$45,542,169
01Oct09 – 30Sep10	$42,506,024
01Oct10 – 30Sep11	$42,506,024
01Oct11 – 30Sep12	$42,506,024
01Oct12 – 30Sep13	$39,469,880
01Oct13 – 30Sep14	$39,469,880

(3) Since the Maximum Available Fee has been established, there will be no annual negotiation of the Maximum Available Fee. However, in the event the Congressional appropriation for a particular fiscal year deviates by more than (plus or minus) 10% from the Total Estimated Cost and Fee, the Contracting Officer shall unilaterally Modify the Contract to adjust the Maximum Available Fee for DOE/NNSA related work amounts, excluding for Reimbursable work, utilizing the calculation method described below.

$$\frac{\text{Congressional Appropriation}}{\text{Total Estimated Cost \& Fee}} \times \text{Maximum Available Fee} = \text{Adjusted Maximum Available Fee for that Year}$$

(4) For FY 2008 through FY 2014, 30% of the Maximum Available Fee will be applied to Fixed Fee and 70% of the Maximum Available Fee will be applied to Performance Incentive Fee.

(d) The Maximum Available Fee related to the DOE/NNSA work effort, excluding Reimbursable work, for each Award Term, Extension Period, and Option Period I is detailed below:

(1) For the Award Term period specified in (d)(2) below, 30% of the Maximum Available Fee will be applied to Fixed Fee and 70% of the Maximum Available Fee will be applied to Performance Incentive Fee.

For the Extension Contract Period from October 1, 2026, through September 30, 2031, and Option Period I from October 1, 2031, through September 30, 2032, specified in (d)(2) below, Fixed Fee shall not exceed 0.83% of the Fee Base and Performance Incentive Fee shall not exceed 1.92% of the Fee Base. The Fee Base shall be calculated using the following formula:

Fee Base = Laboratory Table amount included in the President's Budget request to Congress * (1-0.13) / (1+.0275)

The 0.13 adjustment represents estimated fee base exclusions for non-fee bearing costs. This exclusion rate is not subject to future revision based on actual cost experience and is fixed for the remainder of the Contract. The 0.0275 adjustment serves to remove that portion of the budget that represents the Fixed Fee and Performance Incentive Fee amounts.

The Fixed Fee and Performance Incentive Fee amounts shall be established annually prior to the beginning of the fiscal year and shall be established unilaterally as prescribed in the sections below.

(2) The Fixed Fee for each Award Term period (October 1, 2014, through September 30, 2026) earned by the Contractor related to the DOE/NNSA work effort, excluding Reimbursable work, is 0.90% of the Total Estimated Cost. The Total Estimated Cost is the Laboratory Table amount included in the President's Budget request to Congress, divided by 1.03.

Contract Period	Total Estimated Cost	Fixed Fee
01Oct14 – 30Sep15	$ 1,125,200,971	$ 10,126,809
01Oct15 – 30Sep16	$ 1,136,154,369	$ 10,225,389
01Oct16 – 30Sep17	$ 1,203,339,806	$ 10,830,058
01Oct17 – 30Sep18	$ 1,349,868,932	$ 12,148,820
01Oct18 – 30Sep19	$ 1,439,198,058	$ 12,952,783
01Oct19 – 30Sep20	$ 1,788,239,806	$ 16,094,158
01Oct20 – 30Sep21	$ 1,963,642,718	$ 17,672,784
01Oct21 – 30Sep22	$ 2,168,359,233	$ 19,515,233
01Oct22 – 30Sep23	$ 2,303,915,534	$ 20,735,240
01Oct23 – 30Sep24	$ 2,290,336,893	$ 20,613,032
01Oct24 – 30Sep25	$ 2,432,422,330	$ 21,891,801
01Oct25 – 30Sep26	$ 2,846,575,728	$ 25,619,182

The Fixed Fee for the Extension Period and Option Period I earned by the Contractor related to the DOE/NNSA work effort, excluding Reimbursable work, is 0.83% of the Fee Base.

Extension Period	Fee Base	Fixed Fee
01Oct26 – 30Sep27	$ *	$ *
01Oct27 – 30Sep28	$ *	$ *
01Oct28 – 30Sep29	$ *	$ *
01Oct29 – 30Sep30	$ *	$ *
01Oct30 – 30Sep31	$ *	$ *
Option Period I		
01Oct31 – 30Sep32	$ *	$ *

[*To be completed by the Contracting Officer prior to the applicable award term, Extension Period, or Option Period.]

(3) The Maximum Available Performance Incentive Fee for each Award Term period (October 1, 2014, through September 30, 2026) earned by the Contractor related to the DOE/NNSA work effort, excluding Reimbursable work, is 2.1% of the Total Estimated Cost. The Total Estimated Cost is the Laboratory Table amount included in the President's Budget request to Congress, divided by 1.03.

Contract Period	Total Estimated Cost	Maximum Available Performance Incentive Fee
01Oct14 – 30Sep15	$1,125,200,971	$23,629,220
01Oct15 – 30Sep16	$1,136,154,369	$23,859,242
01Oct16 – 30Sep17	$1,203,339,806	$25,270,136
01Oct17 – 30Sep18	$1,349,868,932	$28,347,248
01Oct18 – 30Sep19	$1,439,198,058	$30,223,159
01Oct19 – 30Sep20	$1,788,239,806	$37,553,036
01Oct20 – 30Sep21	$1,963,642,718	$41,236,497
01Oct21 – 30Sep22	$2,168,359,223	$45,535,544
01Oct22 – 30Sep23	$2,303,915,534	$48,382,226
01Oct23 – 30Sep24	$2,290,336,893	$48,097,075
01Oct24 – 30Sep25	$ 2,432,422,330	$51,080,869
01Oct25 – 30Sep26	$ 2,846,575,728	$ 59,778,090

The Maximum Available Performance Incentive Fee for the Extension Period and Option Period I earned by the Contractor related to the DOE/NNSA work effort, excluding Reimbursable work, is 1.92% of the Fee Base.

Extension Period		Fee Base	Maximum Available Performance Incentive Fee
01Oct26 – 30Sep27	$	*	$ *
01Oct27 – 30Sep28	$	*	$ *
01Oct28 – 30Sep29	$	*	$ *
01Oct29 – 30Sep30	$	*	$ *
01Oct30 – 30Sep31	$	*	$ *

Option Period I		
01Oct31 – 30Sep32	$ *	$ *

[*To be completed by the Contracting Officer prior to the applicable award term or Extension Period, or Option Period.]

(4) For the Award Term from October 1, 2014, through September 30, 2026, the sum of the Total Estimated Cost plus the Fixed Fee and Maximum Available Performance Incentive Fee is the total Laboratory Table amount.

Contract Period	Total Estimated Cost	Maximum Available Fee	President's Budget Lab Table
01Oct14-30Sep15 (Award Term 1)	$1,125,200,971	$33,756,029	$1,158,957,000
01Oct15-30Sep16	$1,136,154,369	$34,084,631	$1,170,239,000
01Oct16-30Sep17	$1,203,339,806	$36,100,194	$1,239,440,000
01Oct17-30Sep18	$1,349,868,932	$40,496,068	$1,390,365,000
01Oct18-30Sep19	$1,439,198,058	$43,175,942	$1,482,374,000
01Oct19-30Sep20	$1,788,239,806	$53,647,194	$1,841,887,000
01Oct20-30Sep21	$1,963,642,718	$58,909,282	$2,022,552,000
01Oct21-30Sep22	$2,168,359,223	$65,050,777	$2,233,410,000
01Oct22-30Sep23	$2,303,915,534	$69,117,466	$2,373,033,000
01Oct23-30Sep24	$2,290,336,893	$68,710,107	$2,359,047,000
01Oct24-30Sep25	$2,432,422,330	$72,972,670	$2,505,395,000
01Oct25-30Sep26	$2,846,575,728	$85,397,272	$2,931,973,000

For the Extension Period and Option Period I, the total estimated cost is the total Laboratory Table Budget from the President's Budget Request less the maximum available fee.

Extension Period	Total Estimated Cost	Maximum Available Fee	President's Budget Lab Table
01Oct26 – 30Sep27	$ *	$ *	$ *
01Oct27 – 30Sep28	$ *	$ *	$ *
01Oct28 – 30Sep29	$ *	$ *	$ *
01Oct29 – 30Sep30	$ *	$ *	$ *
01Oct30 – 30Sep31	$ *	$ *	$ *
Option Period I			
01Oct31 – 30Sep32	$ *	$ *	$ *

(5) In the event Congressional appropriation deviates by more than (plus or minus) 10% from the applicable fiscal year Laboratory Table in the President's Budget annual requests, the Contracting Officer shall unilaterally Modify the Contract to adjust the Fixed Fee and Maximum Available Performance Incentive Fee for DOE/NNSA related work, excluding Reimbursable work. The fee will be adjusted in proportion to the change between the President's Budget and the Congressional appropriation.

$$\frac{\text{Congressional Appropriation}}{\text{President's Budget}} \times \text{Maximum Available Fee} = \text{Adjusted Maximum Available Fee for that Year}$$

(e) Estimated Cost and Fee for Reimbursable Work.

(1) The estimated cost and the maximum available fee for FY 2008 and each subsequent fiscal year during the Basic Term of the Contract and for each Award Term period earned by the Contractor, will be established by NNSA prior to the commencement of the applicable fiscal year and will be incorporated into paragraph (e)(2) below through a Modification to this clause. The fee for each reimbursable work project will be 2.5% of the estimated cost of each project. If the work sponsor or the Government subsequently orders material changes in the amount or character of the Reimbursable Work, an equitable adjustment of the fee, if any, shall be made in accordance with the "Changes" clause. If the Contractor anticipates exceeding the estimated cost for reimbursable work due to new reimbursable work projects, an adjustment to the estimated cost and maximum available fee for reimbursable work shall be submitted for approval by the Contracting Officer.

(2) For the Contract Periods below, the maximum available fee for each fiscal year shall be 2.5% of the estimated cost of NNSA's total estimated budget for reimbursable work. The estimated cost and maximum available fee related to the reimbursable work effort for the specified period is:

Contract Period	Estimated Cost	Maximum Available Fee	Estimated Cost + Max Available Fee
01Oct07 – 30Sep08	$ 328,000,000	$ 8,200,000	$ 336,200,000
01Oct08 – 30Sep09	$ 332,000,000	$ 8,300,000	$ 340,300,000
01Oct09 – 30Sep10	$ 290,000,000	$ 7,250,000	$ 297,250,000
01Oct10 – 30Sep11	$ 318,000,000	$ 7,950,000	$ 325,950,000
01Oct11 – 30Sep12	$ 320,000,000	$ 8,000,000	$ 328,000,000
01Oct12 – 30Sep13	$ 319,000,000	$ 7,975,000	$ 326,975,000
01Oct13 – 30Sep14	$ 260,000,000	$ 6,500,000	$ 266,500,000
01Oct14 – 30Sep15	$ 260,000,000	$ 6,500,000	$ 266,500,000
01Oct15 – 30Sep16	$ 251,000,000	$ 6,275,000	$ 257,275,000
01Oct16 – 30Sep17	$ 263,480,000	$ 6,587,000	$ 270,067,000
01Oct17 – 30Sep18	$ 248,360,000	$ 6,209,000	$ 254,569,000
01Oct18 – 30Sep19	$ 301,912,000	$ 7,548,000	$ 309,460,000
01Oct19 – 30Sep20	$ 311,080,000	$ 7,770,000	$ 318,850,000

01Oct20 – 30Sep21	$ 331,800,000	$ 8,295,000	$ 340,095,000
01Oct21 – 30Sep22	$ 352,000,000	$ 8,800,000	$ 360,800,000
01Oct22 – 30Sep23	$ 402,760,000	$10,069,000	$ 412,829,000
01Oct23 – 30Sep24	$ 444,880,000	$11,122,000	$ 456,002,000
01Oct24 – 30Sep25	$ 461,320,000	$11,533,000	$ 472,853,000
01Oct25 – 30Sep26	$ 487,600,000	$12,190,000	$ 499,790,000

For the Contract Periods below, the maximum available fee for each fiscal year shall be 2.5% of the Fee Base for the estimated reimbursable work.
The Fee base shall be 87% of the total estimated cost. This incorporates the exclusion rate from Section B-2(d). This exclusion rate is not subject to future revision based on actual cost experience and is fixed for the remainder of the Contract. The estimated cost and maximum available fee related to the reimbursable work effort for the specified period is:

Extension Period Fee	Estimated Cost	Maximum Available Fee	Estimated Cost + Maximum Available
01Oct26 – 30Sep27	$ *	$	$ *
01Oct27 – 30Sep28	$ *	$ *	$ *
01Oct28 – 30Sep29	$ *	$ *	$ *
01Oct29 – 30Sep30	$ *	$ *	$ *
01Oct30 – 30Sep31	$ *	$ *	$ *
Option Period I			
01Oct31 – 30Sep32	$ *	$ *	$ *

(f) Provisional Payment of Fee.

(1) The Fixed Fee for FY 2008 and each subsequent fiscal year shall be paid monthly at the rate of one-twelfth (1/12) of the annual fixed fee amount per month. Such payment amounts are to be drawn down by the Contractor from the Contract's special financial institution account in monthly installments on the last day of each month.

(2)

(i) The Performance Incentive Fee for DOE/NNSA related work, excluding Reimbursable work, is authorized for draw down by the Contractor from the Contract's special financial institution account as follows:

(I) in monthly provisional fee payments equivalent to 6% of the Maximum Available Performance Incentive Fee, and

(II) the balance, if any, upon issuance of the Contracting Officer's

notification in accordance with the Section H Clause entitled "Performance Incentives."

(ii) If the provisional payments made in (2)(i) above exceed the Performance Incentive Fee earned determination, the Contractor shall remit any balance due payable to the Government in accordance with directions to be provided by the Contracting Officer.

(g) Except for the condition identified in (c)(3) and (d)(4) above, there shall be no adjustment in the amount of the Contractor's fee by reason of differences between any estimate of cost for performance of the work under this Contract and the actual cost of performance of that work.

(h) Pursuant to the Contract's Section I Clause entitled "Obligation of Funds," the total amount obligated by the Government is $10,097,436.78 and associated accounting and appropriation data is:

Fund	Year	Report	SGL	Object Class	Program	Amount
00900	2007.01	100351	61000000	25200	2220660	$ 867,500.00
00900	2007.01	100351	61000000	25200	2220743	$ 1,750,000.00
00900	2007.01	100351	61000000	25200	2221940	$ 365,000.00
00900	2007.01	100351	61000000	25200	2221079	$ 1,270,500.00
01551	2007.01	100351	61000000	25200	2220210	$ 1,239,000.00
00900	2007.01	100351	61000000	25200	2220660	$ 595,000.00
00900	2007.01	100351	61000000	25200	2220684	$ 290,279.00
00900	2007.01	100351	61000000	25200	2220715	$ 725,000.00
00900	2007.01	100351	61000000	25200	2220723	$ 174,157.78
00900	2007.01	100351	61000000	25200	2221925	$ 965,000.00
00900	2007.01	100351	61000000	25200	2221946	$ 600,000.00
00900	2007.01	100351	61000000	25200	2220803	$ 600,000.00
00900	2006.01	100351	61000000	25200	2220785	$ 315,000.00
00900	2007.01	100351	61000000	25200	2221949	$ 88,000.00
00900	2007.01	100351	61000000	25200	2222031	$ 253,000.00

(i)

(1) If the Contractor is part of a "teaming arrangement" as defined in Federal Acquisition Regulation (FAR) 9.601, the team shall share in the Fixed Fee and Performance Fee structure in paragraphs (c), (d) and (e) of this clause. Separate additional subcontractor fees for individual team members will not be considered an allowable cost under the Contract.

(2) If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit paid to such entity will not be considered an allowable cost under this Contract unless otherwise approved by the Contracting Officer.

B-9999 AMERICAN RECOVERY AND REINVESTMENT ACT WORK VALUES (Mod M083, M099, M104, M123, M124, M131, 140, 142, 153, 155, 160, 166, 170, 171, 172, 177, 179, 181, 189, 230, 232, 241, 294, 300, 329, 353, 395, 432, 455, 471, 542, 569)

Total Funds authorized including maximum available performance fee, if any, for work funded under the American Recovery and Reinvestment Act (Recovery Act).

Year	Work Authorization Number	Funds Obligated	Closed Out	Funds Deobligated	Final Costed Amount
2009	KB/NS50/9/ARRA-1	$675,000		[10]	[10]
2009	KB/NS50/9/ARRA-1 Rev 1	$75,000		[10]	[10]
2009	KB/NS50/9/ARRA-1 Rev 2	$0		[10]	[10]
2012	KB/NS50/9/ARRA-1 Rev 3	$0		[10]	[10]
2014	KB/NS50/9/ARRA-1 Rev 4		Y	($4,359.21) [10]	$745,640.79 [10]
2009	AT/NS50/9/ARRA-1	$728,000	Y	[2]	[2]
2009	AT/NS50/9/ARRA-1 Rev 1	$82,000	Y	[2]	[2]
2011	AT/NS50/9/ARRA-1 Rev 2	$0	Y	[2]	[2]
2012	AT/NS50/9/ARRA-1 Rev 3	$0[2]	NA	($872.65)[2]	$809,127.35[2]
2009	09/CJ000/00/01 Rev 1	$6,000	Y	($11.38)[1]	$5,988.62
2009	09/CJ000/00/02	$24,000	Y	($14,701.98)[1]	$9,298.02
2010	09/CJ000/00/03	$30,000	Y	($30,000)[1]	$0.00
2010	09/CJ000/00/04	($44,713.36)[1]	N/A	N/A	N/A
2009	KB/NS50/9/ARRA-2, Revs 0 and 1	$1,287,000	Y	[6]	[6]
2010	KB/NS50/9/ARRA-2 Rev 1	$0	Y	[6]	[6]
2013	KB/NS50/9/ARRA-2, Rev 2	$0[6]	NA	($1,664.84)[6]	$1,285,335.16[6]
2009	GT-100038-20685-09	$615,000	Y	[8]	[8]
2009	GT-100038-20685-09 Rev 1	$555,000	Y	[8]	[8]
2009	GT-100038-20685-09 Rev 2	$555,000	Y	[8]	[8]

2010	GT-100038-20685-10	$410,000	Y	[8]	[8]
2010	GT-100038-20685-10 Rev 1	$370,000	Y	[8]	[8]
2010	GT-100038-20685-10 Rev 2	$370,000	Y	[8]	[8]
2010	GT-100038-20685-10 Rev 3	$65,570	Y	[8]	[8]
2010	GT-100038-20685-10 Rev 4	$54,015	Y	[8]	[8]
2010	GT-100038-20685-10 Rev 5	$74,065	Y	[8]	[8]
2011	GT-100038-20685-09 Rev 3 & GT-100038-20685-10 Rev 6	$0	Y	[8]	[8]
2011	GT-100038-20685-09 Rev 4 & GT-100038-20685-10 Rev 7	$0	Y	[8]	[8]
2011	GT-100038-20685-09 Rev 5 & GT-100038-20685-10 Rev 8	$0	Y	[8]	[8]
2013	GT-100038-20685-09 Rev 5 & GT-100038-20685-10 Rev 9	$0	NA	($10,902.60)[8]	$979,667.40[8]
2013	GT-100038-20685-09 Rev 5 & GT-100038-20685-10 Rev 10	$0	NA	($1,280.74)[8]	$1,077,737.26[8]
2013	GT-100038-20685-09 Rev 5 & GT-100038-20685-10 Rev 11	$0	NA	($7,405.54)[8]	$991,659.46[8]
2009	100038-20758-10	$121,900	Y	($121,900)	$0.00
2010	100038-20758-10 Rev 2	($121,900)	N/A	N/A	N/A
2010	100038-21195-10	$121,900	Y	[7]	[7]
2013	100038-21195-10 Rev 1	$0[7]	NA	($31.36)[7]	$121,868.64
2010	LLNL-10-FEW0173	$200,000	Y	($49,220.37)	$150,779.63
2011	LLNL-10-FEW0173 Rev 1	($49,220.37)	N/A	N/A	N/A

2010	AT/NS50/10/ARRA-2	$187,000	Y	($6,491.70)	$180,508.30
2011	AT/NS50/10/ARRA-2 Rev 1	($6,491.70)	N/A	N/A	N/A
2010	AT/NS50/10/ARRA-3	$2,500,000	Y	$0	$2,500,000
2010	AT/NS50/10/ARRA-3 Rev 1	$0.00	Y	N/A	N/A
2010	KJ/NS50/0/ARRA-1	$2,562,506	Y	($58,978)	$2,503,528
2010	KJ/NS50/0/ARRA-1 Rev 1	$0.00	Y	N/A	N/A
2010	KJ/NS50/0/ARRA-1	$147,000	Y	[3]	[3]
2010	KJ/NS50/0/ARRA-1	$16	Y	[3]	[3]
	Rev 1				
2012	KJ/NS50/0/ARRA-1 Rev 2	$0[3]	NA	($1,548.69)[3]	$145,467.31[3]
2010	KJ/NS50/0/ARRA-2	$560,000	Y	[4]	[4]
2010	KJ/NS50/0/ARRA-2 Rev 1	$39,375	Y	[4]	[4]
2011	KJ/NS50/0/ARRA-2 Rev 2	$0	Y	[4]	[4]
2012	KJ/NS50/0/ARRA-2 Rev 3	$0[4]	NA	($57.28)[4]	$599,317.72[4]
2010	09/CJ000/05/01 Rev 00	$3,332,000	NA		
2013	09/CJ000/05/01 Rev 01	$0	NA	[11]	[11]
2014	09/CJ000/05/01 Rev 02	$0	NA	[11]	[11]
2015	09/CJ000/05/01 Rev 03	$0	Y	($20,623.10)[11]	$3,311,376.90[11]
2010	LLNL-10-FEW0180	$2,000,000	Y	[5]	[5]
2013	LLNL-10-FEW0180 Rev 01	$0[5]	NA	($1,003.59)[5]	$1,998,996.41[5]
2010	LLNL-10-FEW0181	$2,000,000		[9]	[9]
2014	LLNL-10-FEW0181 Rev 01	$0[9]	NA	($1,304.76)[9]	$1,998,695.24[9]

The Contractor shall not start work funded under the Recovery Act until the Contractor receives a Work Authorization and funds are placed into the Contract. The Contractor is authorized to incur costs not to exceed the amount as stipulated under each Work Authorization, consistent with the other Contract terms and conditions, including the Work Authorization(s). Additional fee, if any, for the performance of work under the Recovery Act shall be determined by NNSA in accordance with Section B-2 and applicable NNSA policy.

Section C – DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C-1 STATEMENT OF WORK (Mod 196)

The work to be performed is set forth in the Contract's Section J Appendix B entitled "Statement of Work."

Section D – PACKAGING AND MARKING

D-1 PACKAGING AND MARKING

Packaging and marking of items to be delivered shall be in accordance with work authorization requirements or other written direction of the Contracting Officer or the Contracting Officer's Representative (COR).

Section E – INSPECTION AND ACCEPTANCE

E-1 FAR 52.246-5 INSPECTION OF SERVICES – COST-REIMBURSEMENT (APR 1984)

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may-

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action

necessary to ensure future performance in conformity with contract requirements, the Government may-

(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

E-2 FAR 52.246-9 INSPECTION of RESEARCH and DEVELOPMENT (Short Form) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times, and in a manner that will not unduly delay or disrupt the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

E-3 INSPECTION AND ACCEPTANCE

If the Government performs inspection of activities or acceptance of work efforts under this contract such inspection or acceptance will be accomplished by the Contracting Officer or any other duly authorized representative.

Section F - DELIVERIES OR PERFORMANCE

F-1 PLACE OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations within and outside the United States, but the principal place of performance will be at the Lawrence Livermore National Laboratory in Livermore, California.

F-2 PERIOD OF PERFORMANCE (Mod 196, 232, 258, 363, 416, 502, 577, 631, 684, 694, 723, 770, 793, 877)

(a) The Contract's period of performance includes the following unless sooner reduced, terminated or extended in accordance with the provisions of this Contract:

(1) Transition Term: 09May07 through 30Sep07;

(2) Basic Term: 01Oct07 through 30Sep14

(3) Earned award Terms:

FY2009: 01Oct14 through 30Sep15;
FY2010: 01Oct15 through 30Sep16;
FY2011: 01Oct16 through 30Sep17;
FY2012: 01Oct17 through 30Sep18;
FY2014: 01Oct18 through 30Sep19;
FY2015: 01Oct19 through 30Sep20;
FY2016: 01Oct20 through 30Sep21;
FY2017: 01Oct21 through 30Sep22;
FY2018: 01Oct22 through 30Sep23;
FY2019: 01Oct23 through 30Sep24;
FY2020: 01Oct24 through 30Sep25;
FY2021: 01Oct25 through 30Sep26

(4) Forfeited Award Term: FY2013 Forfeited Award Term

(5) Extension Period: 01Oct26 through 30Sep31

(6) Option Period I: 01Oct31 through 30Sep32

(b) The period of performance of this contract will expire on September 30, 2031 unless Modified for Option Period I listed in (a)(6).

(c) The Contract's maximum period of performance, if extended beyond the Basic Term of the Contract, shall not exceed 25 years, 4 months, and 23 days.

(d) The Transition Term shall be for the transition activities identified in the Contract Section J Appendix K entitled "Contractor's Transition Plan" issued under Modification M000. The Contractor's responsibility for management and operation of the Laboratory against the Statement of Work shall commence with the Basic Term. The Award Term conditions are set forth in the Contract's Section H Clause entitled "Award Term."

F-3 STOP WORK IN EVENT OF IMMINENT DANGER (Mod 877)

The Contractor shall immediately cease any activity that is imminently dangerous to the life or health of the workers, the public, or the environment. In the event of imminent danger, any Federal or Contractor employee is authorized to instruct the Contractor to stop work. The Contracting Officer must be contacted immediately after the event such that a written stop-work order can be issued in accordance with FAR 52.242-15, Stop-Work Order (AUG 1989), Alternate I (APR 1984). Employees of the Contractor shall be apprised of their right to stop work pursuant to this clause. The Contractor shall include this clause in all subcontracts to be performed at the sites. In the event of a security incident involving an imminent threat to the facility, the Contractor shall perform their security duties and continue until the threat is eliminated, at which point the Contractor shall reconstitute and resume normal security operations subject to this clause.

F-4 EXERCISE OF OPTION(S) (MOD 877)

The decision to extend this Contract via the exercise of an option will be a unilateral decision made by NNSA. Exercise of any option shall be in accordance with Section I clause FAR 52.217-9, *Option to Extend the Term of the Contract*. Other factors considered are described at FAR Part 17.207, *Exercise of Options*, which must be met before any option can be exercised. At a minimum, the NNSA will consider the following in determining whether to extend the Contract:

(1) The Contractor's overall performance, taking into consideration performance evaluations pursuant to the Contractor Performance Assessment Reporting System (CPARS); and

(2) The considerations under DEAR 970.1706-1(b) for exercising options under M&O contracts.

Section G – CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS (Mod 196, 232, 877)

(a) The NNSA Manager, Livermore Field Office (LFO), is the Contractor's primary point of contact for all technical and administrative matters, except as identified in

(b) below, regarding this Contract. The LFO Administrative Contracting Officers are the Contractor's primary point of contact for all contractual matters for this Contract. The LFO Manager and LFO Administrative Contracting Officers can be reached at:

U.S. Department of Energy
National Nuclear Security Administration
Livermore Field Office
7000 East Avenue, Mail Stop L293
Livermore, CA 94551
Telephone: 925-422-0879

(c) The Patent Counsel, Office of the General Counsel, NNSA John A. Gordon, Albuquerque Complex, is the Contractor's focal point for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses and technical data issues. The Patent Counsel can be reached at:

U.S. Department of Energy, NNSA Patent Counsel
Office of General Counsel (NA-GC)
NNSA Albuquerque Complex
24600 20th St SE

Kirtland Air Force Base
Albuquerque, NM, 87117-5507

(d) The Contractor may use the Organizational Property Management Officer as a point of contact for guidance and assistance involving personal property requirements. The Contracting Officer shall be contacted for any matter that involves a change in any of the express terms and conditions of the Contract. Correspondence being sent to the Organizational Property Management Officer should be addressed to:

U.S. Department of Energy/National Nuclear Security Administration
Organizational Property Management Officer (OPMO)
Personal Property Albuquerque
P.O. Box 5400 Albuquerque, NM, 87185-5400

(e) Correspondence. To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract Number, as illustrated below:

"SUBJECT: Contract No. DE-AC52-07NA27344, (insert subject topic after Contract Number, e.g., "Request for subcontract placement approval")"

G-2 CONTRACTOR CONTACT (Mod 877)

(a) The Contractor's Laboratory Director is responsible for all matters regarding this Contract, except for the Contractor's Parent Organization's involvement under the Contract. Parent Organization's costs, incurred under this Contract, have the same meaning as Home Office Expenses in Department of Energy Acquisition Regulation 970.3102-3-70 "Home office expenses".

(b) The Contractor shall identify to the Livermore Field Office Contracting Officer the contracting contact who has the authority and is responsible for managing, administering, and negotiating changes to the terms and conditions of this contract as well as executing contract Modifications on behalf of the contractor.

Section H – SPECIAL CONTRACT REQUIREMENTS

H-1 REDEFINING THE FEDERAL/CONTRACTOR RELATIONSHIP TO IMPROVE MANAGEMENT AND PERFORMANCE (Mod 674, 854)

(1) General

This clause sets forth an overview of NNSA's approach to improving the effectiveness and efficiency of the Nuclear Security Enterprise without compromising Integrated Safety Management (ISM) and. The principles of ISM shall serve as the foundation of the implementing mechanisms at the Laboratory.

(2) Partnering

NNSA and the Contractor shall partner to establish and maintain a long-term relationship. The Contractor shall effectively manage and operate LLNL in accordance with the principles established in FAR 35.017 for Federally Funded Research & Development Centers. This long-term relationship is intended to provide continuity for the Contractor to attract high-quality personnel; maintain currency in its fields of expertise, objectivity, and independence; preserve its familiarity with the needs of NNSA; and provide a quick response capability. The partnership will include collaboration to enhance NNSA mission delivery.

(3) Clarifying the Contract Relationship

NNSA will establish the work to be accomplished by the Contractor, set applicable requirements to be met by the Contractor and provide performance direction to the Contractor regarding what NNSA wants in each of its programs. NNSA will issue performance direction to the Contractor only through a warranted Contracting Officer or a designated Contracting Officer's Representative. All other Federal staff and oversight components are therefore precluded from tasking contractor personnel. The Contractor shall utilize its expertise and ingenuity in determining how to perform the work, implement NNSA requirements, and to comply with NNSA performance direction. The Contractor is accountable for assuring safe, secure, effective and efficient operations in accordance with the terms and conditions of this Contract.

(4) Approach to Oversight

NNSA will increase Contractor accountability as a result of implementation of the Contractor's Assurance System to achieve improved Contractor performance in all aspects of the Contract. Parent Organization oversight of the Contractor's implementation of the Assurance System is key to achieving performance improvements. NNSA will assess Contractor progress in improvement of its performance resulting from implementation of the Assurance System. At all times during the term of the Contract, NNSA will continue, preserve and maintain

the right to determine the level of NNSA oversight of all Contractor activities under this Contract.

(5) Empowering Contractor Expertise

The Contractor is encouraged to identify and evaluate best commercial standards and best business practices and to continuously pursue improvements in all aspects of Contract performance where cost effective and efficient improvements can be achieved without compromising ISM. The Contractor is also encouraged to use the private-sector expertise of its Parent Organizations to improve Contract performance as appropriate.

(6) Results-Oriented, Streamlined Performance Appraisal

Performance objectives that focus on those areas of greatest strategic value to NNSA, and systems-based measures and targets will be used in a results-oriented, streamlined performance appraisal process.

(7) Reward for Achieving Cost Efficiencies

The Contractor will be rewarded for the achievement of cost efficiencies through investment of cost savings at the Laboratory and through Contractor Directed Research and Development and the opportunity to earn additional Contract term.

H-2 PERFORMANCE DIRECTION (Mod 726, 755)

(a) The Contractor is responsible for the management and operation of the site in accordance with the Terms and Conditions of the Contract, duly issued Work Authorizations (WAs), and written direction and guidance provided by the Contracting Officer and the Contracting Officer's Representative (COR). NNSA is responsible for establishing the work to be accomplished, the applicable requirements to be met, and overseeing the performance of work of the Contractor. The Contractor will use its expertise and ingenuity in Contract performance and in making choices among acceptable alternatives to most effectively, efficiently and safely accomplish the work called for by this Contract

(b) Only the Contracting Officer may issue, Modify, and priority rank WAs.

(c)

(1) The Contracting Officer and the NNSA Administrator will appoint, in writing, specific NNSA employees as CORs with the authority to issue Performance Direction to the Contractor. CORs are authorized to act within the limits of their delegation letter. A copy of each letter will be provided to the Contractor. COR functions include technical monitoring, inspection, and other functions of a technical nature not involving a change in the scope, cost, or terms and conditions of the Contract. The COR is authorized to review and approve technical reports, drawings, specifications, and technical information delivered by the Contractor.

(2) The Contractor must comply with written Performance Directions that are signed by the COR and:

i. Redirect the Contract effort, shift work emphasis within a work area or a WA, require pursuit of certain lines of inquiry, further define or otherwise serve to accomplish the Statement of Work (SOW), or
ii. Provide information that assists in the interpretation of drawings, specifications, or technical portions of the work description.

(3) Performance Direction does not:

i. authorize the Contractor to exceed the funds obligated on the Contract;
ii. authorize any increased cost or delay in delivery in a WA;
iii. entitle the Contractor to an increase in fee; or
iv. change any of the terms or conditions of the Contract.

(d) The Contractor shall accept only Performance Direction that is provided in writing by a COR and that is within the SOW and a WA.

(e)

(3) The Contractor shall promptly comply with each duly issued Performance Direction unless the Contractor reasonably believes that the Performance Direction violates this clause. If the Contractor believes the Performance Direction violates this clause, the Contractor shall suspend implementation of the Performance Direction and promptly notify the Contracting Officer of its reasons for believing that the Performance Direction violates this clause. Oral notification to the Contracting Officer shall be confirmed in writing within ten days of the oral notification.

(4) The Contracting Officer will determine if the Performance Direction is within the SOW and WA. This determination will be issued in writing and the Contractor shall promptly comply with the Contracting Officer's direction. If it is not within the SOW or WA, the Contracting Officer may issue a change order pursuant to the Contract's Section I Clause entitled "Changes."

(f) The Parties agree to maintain full and open communication at all times, and on all issues affecting Contract performance, during the term of this Contract.

H-3 LABORATORY, PLANT, AND SITE STRATEGIC PLANNING GUIDANCE (Mod 652, 677, 715, 774)

The Contractor shall submit to NNSA a laboratory, plant, or site strategic plan annually in accordance with the annual strategic planning guidance and the terms and conditions of the contract, or as directed by the Contracting Officer. The laboratory, plant, or site M&O leadership team shall present the site's plan and engage in discussions with senior NNSA and

other M&O leadership as well as with key stakeholders (e.g., DOE and interagency partners) annually, if required in the annual strategic planning guidance, and as directed by the Contracting Officer.

H-4 CONTRACTOR ASSURANCE SYSTEM (Mod 388, 726, 785)

The Contractor shall have and utilize a Contractor-designed system to manage performance consistent with Contract requirements and shall be transparent to the Government. The CAS shall provide the Contractor and Government assurance that: the Contractor's policies and practices are meeting the requirements of the Contract; those policies and practices are being implemented throughout the Laboratory; and continual improvement through self-identification of deficiencies is occurring. The CAS shall be a primary tool used by Contractor management to: measure and improve performance; ensure that mission objectives and Contract requirements are met, to include individual Work Authorizations; ensure that workers, the public and the environment are protected; and ensure that operations, facilities, and business systems are efficiently and effectively operated and maintained. An effective CAS integrates Contractor management, supports corporate parent governance, and facilitates Government oversight systems. The Contractor is fully accountable for performing its own assessment of these areas. NNSA oversight shall not be relied upon by the Contractor in place of its CAS system and does not affect the Contractor's accountability for performance. The CAS shall be approved and monitored by the Contractor's Parent Organization or Board of Directors. An effective working CAS will provide the Government the opportunity to reduce transactional oversight.

H-5 NNSA OVERSIGHT (Mod 854)

At all times during the term of this Contract, NNSA will continue, preserve and maintain the right to determine the level of NNSA oversight of all Contractor activities under this Contract. In addition to the rights and remedies provided to the Government under other provisions of this Contract, the Contractor shall fully cooperate with NNSA oversight personnel, NNSA Facility Representatives, and subject matter experts in the performance of their assigned oversight functions, and shall provide complete access to facilities, information, and Contractor personnel.

H-6 PARENT OVERSIGHT PLAN (Mod M053, M107, 164, 232, 258, 287, 300, 363, 388, 473, 502, 513, 555, 577, 580, 619, 631, 645, 660, 674, 684, 689, 694, 720, 723, 770, 793, 824, 845, 854, 877, 885, 904, 915)

(a) On an annual basis and as required by the Contracting Officer, the Contractor shall provide a Parent Oversight Plan that details the Parent Organization's planned activities to monitor the Contractor's performance of statement of work activities including ISM priorities and assist the Contractor in meeting Laboratory mission and operational requirements. The Parent Oversight Plan shall identify the official(s) responsible for administration of the plan and include the estimated cost.

(b) The annual Parent Oversight Plan update shall be submitted to the Contracting Officer 30

days prior to the forthcoming fiscal year for review and approval.

(c) The annual estimated cost for the Parent Oversight Plan is detailed below by contract period. Costs associated with subsequent annual Plan updates for the remainder of the Contract term will be incorporated into this clause via supplemental agreement Modification. Costs shall only include: the actual direct labor costs of the persons performing such services; a percentage factor of direct labor costs to cover fringe benefits and payroll taxes; travel; and other direct costs. Any fee or other indirect costs such as allocation for overhead, G&A, and Cost of Money will not be reimbursed. The Contractor shall charge to the account of the Government using the special financial institution account as provided in the Contract's Section I Clause entitled "Payments and Advances," or as otherwise directed by the Contracting Officer.

Contract Period	**Cost Estimate**	**Mod #**
10/01/2007-09/30/2008	$4,177,243.00	M-003
10/01/2008-09/30/2009	$3,712,955.00	M-053
10/01/2009-09/30/2010	$2,344,137.00	M-107
10/01/2010-09/30/2011	$2,285,990.00	164
10/01/2011-09/30/2012	$2,283,058.00	232
10/01/2012-09/30/2013	$2,332,209.00	300
10/01/2013-09/30/2014	$2,277,751.00	388
10/01/2014-09/30/2015	$2,047,131.00	473
10/01/2015-09/30/2016	$2,003,806.00	555
10/01/2016-09/30/2017	$1,912,558.00	619
10/01/2017-09/30/2018	$1,953,463.00	660
10/01/2018-09/30/2019	$1,882,498.00	684
10/01/2019-09/30/2020	$1,868,591.00	720
10/01/2020-09/30/2021	$1,821,944.00	770
10/01/2021-09/30/2022	$1,676,444.00	793
10/01/2022-09/30/2023	$1,714,854.00	824
10/01/2023-09/30/2024	$1,943,775.00	845
10/01/2024-09/30/2025	$2,119,253.00	885
10/01/2025-09/30/2026	$2,133,222.00	904
10/01/2026-09/30/2027		
10/01/2027-09/30/2028		
10/01/2028-09/30/2029		
10/01/2029-09/30/2030		
10/01/2030-09/30/2031		

(d) The Contractor shall provide periodic reports of Parent Oversight activities and costs incurred as required by the Contracting Officer.

Contract Period	**Actual Costs**	Mod #
10/01/2007-09/30/2008	$2,063,577.00	164
10/01/2008-09/30/2009	$1,915,649.36	513
10/01/2009-09/30/2010	$1,514,809.56	513

10/01/2010-09/30/2011	$1,613,780.66	513
10/01/2011-09/30/2012	$1,872,615.91	513
10/01/2012-09/30/2013	$1,715,412.09	513
10/01/2013-09/30/2014	$1,298,617.39	513
10/01/2014-09/30/2015	$1,389,360.74	580
10/01/2015-09/30/2016	$1,442,238.43	645
10/01/2016-09/30/2017	$1,345,312.00	660
10/01/2017-09/30/2018	$1,308,074.00	689
10/01/2018-09/30/2019	$1,310,580.00	720
10/01/2019-09/30/2020	$1,046,835.20	770
10/01/2020-09/30/2021	$1,063,399.00	793
10/01/2021-09/30/2022	$1,337,550.00	824
10/01/2022-09/30/2023	$1,558,530.00	845
10/01/2023-09/30/2024	$1,015,422.00	885
10/01/2024-09/30/2025	$1,443,531.63	915
10/01/2025-09/30/2026		
10/01/2026-09/30/2027		
10/01/2027-09/30/2028		
10/01/2028-09/30/2029		
10/01/2029-09/30/2030		
10/01/2030-09/30/2031		

(e) Cost limitations set forth in paragraph (c) above shall not be exceeded without prior Contracting Officer approval. The Parties agree that the costs may be reviewed further for appropriateness and scope. In addition, the Parties agree that a tracking process, acceptable to the Contracting Officer, providing sufficient detail for reasonable accountability, shall be implemented. The Parties agree to negotiate in good faith any adjustments to these amounts as a result of empirical information from any such tracking system or reviews.

H-7 ACCOUNTABILITY (Mod 674, 854)

The Contractor is responsible for the quality of its products and services and for ensuring that ISM are integrated into its operations. The Contractor is also responsible for assessing its operations, programs, projects and business systems, identifying deficiencies and implementing needed improvements in accordance with the Contract's terms and conditions. The Contractor is responsible to ensure its activities provide adequate protection to the workers, public and the environment. Where NNSA oversight has evaluated the Contractor's performance in meeting its obligations under this Contract, the Contractor shall not rely upon NNSA's evaluations but is accountable for performing its own assessment of these areas.

H-8 UTILIZATION OF PARENT ORGANIZATION SUPPORT (Mod M053, M107, 164, 232, 258, 287, 363, 502, 513, 542, 569, 577, 619, 631, 645, 652, 660, 677, 689, 694, 709, 720, 723, 745, 770, 785, 793, 817, 824, 845, 854, 868, 877, 885, 915)

(a) Parent Organization Systems

(1) The Parties agree that applying the Contractor's Parent Organization systems to site operations for the purpose of streamlining the Laboratory's operational, administrative and business systems, and Parent Organization services provided for that purpose, are allowable costs. The use of the Contractor's Parent Organization systems is encouraged provided that such systems are more efficient and represent an overall cost savings to the Government versus existing site systems, and data is readily transferable to a successor contractor. The Contracting Officer must approve the Contractor's proposed plan to use its Parent Organization systems. Such system and related support services are not considered a "Subcontract" as contemplated by the Contract's Section I Clause entitled "DEAR 970.5244-1 Contractor Purchasing System Deviation)".

(2) If the Contractor's proposed plan is approved by the Contracting Officer, the Contractor may incur amounts for the approved systems and related support services up to the approved estimated cost and shall charge to the account of the Government using the special financial institution account as provided in the Contract's Section I Clause entitled "Payments and Advances," or as otherwise directed by the Contracting Officer. Costs shall only include: the actual direct labor costs of the persons performing such services; materials; subcontracts; travel; other direct costs; and applicable indirect costs applied in accordance with the Contractor's Parent Organization's disclosed accounting practices, or, if applicable, Cost Accounting Standards Disclosure Statement. A separate fee for use of such systems and associated services is unallowable.

(3) The Contractor shall provide periodic reports of activities and costs incurred as required by the Contracting Officer.

(4) Rights in software and systems. The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any Contractor-owned software and systems brought in and used under this Clause. Said license shall be limited to the continued operations of the Lawrence Livermore National Laboratory by successor contractors.

(b) Parent Organization Experts

(1) The utilization of Parent Organization experts, which are defined herein as employees of Parent Organizations, for the purpose of achieving improvement in management and performance such as those identified through Parent Organization oversight are allowable costs subject to the conditions contained herein. Such Parent Organization experts' services are not considered a "Subcontract" as contemplated by the Contract's Section I Clause entitled "DEAR 970.5244-1 Contractor Purchasing System." The total estimated cost for Parent Organization experts' services is to be determined by the Contracting Officer during the Transition Period, and annually thereafter, and added via supplemental agreement contract Modification.

Contract Period	Estimated Cost	Actual Cost	Mod #
10/01/2007-09/30/2008	$925,000	$724,863.00	M-107
10/01/2008-09/30/2009	$2,000,000	$1,824,512.47	513
10/01/2009-09/30/2010	$4,000,000	$ 224,859.19	513
10/01/2010-09/30/2011	$1,250,000	$613,086.77	513
10/01/2011-09/30/2012	$500,000	$236,406.80	513
10/01/2012-09/30/2013	$500,000	$326,360.55	513
10/01/2013-09/30/2014	$500,000	$161,934.51	513
10/01/2014-09/30/2015	$500,000	$351,280.82	569
10/01/2015-09/30/2016	$500,000	$382,482.47	645
10/01/2016-09/30/2017	$500,000	$130,320.85	660
10/01/2017-09/30/2018	$500,000	$ 75,363.27	689
10/01/2018-09/30/2019	$375,000	$100,668.81	720
10/01/2019-09/30/2020	$375,000	$156,130.80	770
10/01/2020-09/30/2021	$850,000	$550,938.00	793
10/01/2021-09/30/2022	$900,000	$885,503.00	824
10/01/2022-09/30/2023	$992,310	$992,310.00	868
10/01/2023-09/30/2024	$1,100,000	$743,370.98	885
10/01/2024-09/30/2025	$1,100,000	$762,292.33	885
10/01/2025-09/30/2026	$950,000		915
10/01/2026-09/30/2027			
10/01/2027-09/30/2028			
10/01/2028-09/30/2029			
10/01/2029-09/30/2030			
10/01/2030-09/30/2031			

(3) The Contractor may incur costs for its Parent Organization experts up to the approved estimated cost and shall charge to the account of the Government using the special financial institution account as provided in the Contract's Section I Clause entitled "Payments and Advances," or as otherwise directed by the Contracting Officer. Costs shall only include: the actual direct labor costs of the persons performing such services; a percentage factor of direct labor costs to cover fringe benefits and payroll taxes; travel; and other direct costs. Any fee or other indirect costs such as allocation for overhead, G&A, and Cost of Money will not be reimbursed.

(4) The Contractor shall provide periodic reports of activities and costs incurred as required by the Contracting Officer.

H-9 BENCHMARKING AND STANDARDS MANAGEMENT (Mod 674, 877)

(a) Benchmark with Industry. The Contractor shall regularly benchmark with industry to identify best commercial standards and best business practices that will improve site operations with the goal of improving performance where effective and efficient without compromising Integrated Safety Management (ISM) and Integrated Safeguards and Security Management (ISSM).

(b) Proposal of Alternative. Where best commercial standards or best business practices are identified that will improve site operations consistent with paragraph (a) above, the Contractor may, at any time during performance of this Contract, propose an alternative procedure, standard, or assessment mechanism (collectively referred to herein as "alternative") in a Directive or DOE/NNSA requirement by submitting to the Contracting Officer a signed proposal(s) that describes (1) the nature and scope of the alternative and Contractor system of oversight, (2) the anticipated benefits, including any cost benefits, to be realized in performance under the Contract, (3) a schedule for implementation of the alternative, (4) a detailed evaluation and a statement that the revised alternative is an effective, efficient means to meet the Directive without compromising ISM and ISSM, and (5) any additional information required by NNSA. NNSA will evaluate the Contractor's proposal, and the Contractor will not implement a proposed change until it is formally approved by the NNSA and communicated to the Contractor by the Contracting Officer.

(c) Deficiency and Remedial Action. If, during performance of this Contract, NNSA determines that a previously approved alternative is not satisfactory, the Contracting Officer will require the Contractor to prepare a corrective action plan for NNSA approval. If NNSA is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the Directive or DOE/NNSA requirement.

(d) Laws and Regulations Exempted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including DOE regulations.

H-10 RESERVED (Mod 258)

H-11 TRANSITION

Contract Clauses H-2 through H-10 provides a mechanism for the Contractor to improve its management and performance. The Laboratory's management systems that exist on the date of Contract award will continue until the Contractor addresses the applicable requirements contained in Contract Clauses H-2 through H-10. For changes that require NNSA approval, the Contractor will not implement a change until it is formally approved by the Contracting Officer.

H-12 STRATEGIC INITIATIVES (Mod 854, 877)

(a) The Contractor shall participate with NNSA and other NNSA M&O contractors as part of an "enterprise organization" to evaluate, plan, develop and implement strategic initiative activities that optimize mission, laboratory, and business operations across the Nuclear Security Enterprise (NSE). The goal of these initiatives is to enhance NNSA mission delivery by improving the effectiveness and efficiency of operations and business areas across the NSE.

(b) Strategic mission initiatives should result in timely fulfillment of mission goals such as weapon design, development, and production.

(c) Strategic business and management initiatives should result in reduced operational costs complex-wide, more consistent work practices and operational processes, better pricing, better products, more timely delivery, reduced administrative costs and lead times for both the contractor and the NNSA, greater standardization and interchangeability across the NSE, and increased awards to small business entities.

(d) The Contractor shall cooperate with NNSA and NSE facilities in identifying potential cross-NSE benefits to be derived from implementing common practices and goals across the NSE in the following areas:

(1) Mission Workload Support.
- i. Nuclear Weapons
- ii. Nuclear Non-Proliferation
- iii. Emergency Operations
- iv. Infrastructure and Environments
- v. National Security
- vi. Counterterrorism and Counter-proliferation

(2) Enterprise Functional Support
- i. Enterprise Finance Operations.
- ii. Enterprise Property Operations
- iii. Enterprise Human Resource Operations
- iv. Enterprise Procurement Operations
- v. Enterprise information technology
- vi. Other business/management processes common to all or groups of NSE facilities

(e) The Contractor shall support these and other initiatives that result in a shift to Enterprise-Led Organizations with the lead assigned based on the contractor who possesses the most expertise and experience level within the complex.

H-13 PERFORMANCE BASED MANAGEMENT (Mod 394)

(a) Performance-Based Management System. This Contract is a management and operating contract, which holds the Contractor accountable for performance. This Contract uses clearly defined standards of performance consisting of performance objectives and performance incentives including multi-site performance incentives as described in the Contract's Section H Clause entitled "Performance Incentives," and award term incentives as indicated in Contract's Section H Clause entitled "Award Term" with measures and targets for each area established on a fiscal year basis and incorporated into the Performance Evaluation Plan.

(b) Performance Appraisal Process.

(1) Performance Evaluation Plan.

(i) A Performance Evaluation Plan shall be developed and finalized by the Contracting Officer, with Contractor input, prior to the scheduled start date of the appraisal period. As a one-time change to the Contract, the due date for FY 2014 Performance Evaluation Plan is extended to November 1, 2013. The Performance Evaluation Plan shall document the process and associated performance objectives, performance incentives including multi- site performance incentives, award term incentives and associated measures and targets by which the Contractor's performance will be evaluated and rated. The Parties will attempt to reach mutual agreement on performance objectives, performance incentives including multi-site performance incentives, award term incentives and associated measures and targets that reflect expected business, operational and technical performance tied to key end products and NNSA/DOE strategic goals and objectives. The NNSA Livermore Field Office Manager reserves the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance. The NNSA Administrator reserves the unilateral right to make the final decision on all award term incentives (including the associated measures and targets) used to evaluate Contractor performance.

(ii) Only the Contracting Officer may revise the Performance Evaluation Plan, consistent with the Contract's Statement of Work, during the appraisal period of performance. The Contracting Officer shall notify the Contractor:

(I) Of such bilateral changes at least sixty calendar days prior to the end of the affected appraisal period;

(II) Of such unilateral changes at least ninety calendar days prior to the end of the affected appraisal period and at least thirty calendar days prior to the effective date of the change; or

(III) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the appraisal period.

(2) Contractor Self-Assessment. The Contractor shall prepare an annual self-assessment of its performance against each of the performance objectives and incentives contained in the Performance Evaluation Plan. The annual self- assessment shall be submitted within five-working days after the end of the appraisal period. The Contracting Officer will identify the structure and medium to be used by the Contractor in delivering its annual self-assessment.

H-14 AWARD TERM (Mod M034)

(a) Commencing in Fiscal Year 2009, the Contract's term as set forth in the Contract's Section F Clause entitled "Period of Performance" will be extended if, in its annual NNSA Performance Evaluation Report, the Contractor both: (1) obtains the required rating on the Performance Incentive Fee Sections' objectives contained in the Performance Evaluation Plan (PEP); and (2) meets the Award Term Incentives set forth in the Award Term Section of the PEP. If the Contractor does not receive the required rating in (1) above, this Award Term clause becomes inoperable for the associated evaluation period.

(b) The NNSA Livermore Field Office Manager will make an award term recommendation to the NNSA Fee Determination Official (FDO) based upon his/her evaluation in accordance with paragraph (a) above. The decision whether to award additional term will be made by the FDO if the conditions in paragraph (a) above are met in conjunction with the annual performance evaluation determination.

(c) The award term decision is a unilateral determination of the FDO.

(d) If the FDO's determination is to award additional term, the Contract shall be Modified unilaterally by the Contracting Officer to extend the term of the Contract by one year.

(e) The Contract's maximum term, including all earned award term, shall not exceed the term identified in the Contract Section F Clause entitled "Period of Performance."

(f) If the Contractor fails 4 times to earn award term, the operation of this Award Term clause will cease. Forfeited Award Term: 1 (FY 2013)

(g) A significant failure as determined by the Contracting Officer of the Contractor's management controls, as defined in the Contract's Section I Clause entitled "Management Controls," or a performance failure, as utilized in the Contract's Section I Clause entitled "Conditional Payment Of Fee, Profit, Or Incentives – Facilities Management Contracts," by the Contractor may result in the forfeiture of the current year Award Term period in progress, up to an additional 4-years of previously earned award term, and any other remedies provided for in the contract. Such reduction in Contract term, if exercised by the Government, does not constitute a termination action pursuant to the Contract's Section I Clause entitled "Termination (Cost Reimbursement) (May 2004) as Modified by DEAR 970.4905-1(b)."

(h) The rights and remedies of the Government specified herein in this Award Term clause are not exclusive and are in addition to any other rights and remedies provided by law, regulation, or under this Contract. This Award Term clause does not confer any other rights or remedies to the Contractor other than those specified in this Award Term clause.

H-15 PERFORMANCE INCENTIVES (Mod 877, 915)

(a.) The NNSA shall, at the conclusion of each specified appraisal period, evaluate the Contractor's performance for all Performance Incentive requirements. Performance incentives shall include multi-site performance objectives across the Nuclear Security Enterprise with measurable performance outcomes on those areas of strategic value to NNSA.

(b.) The Performance Incentive Fee determination will be made in accordance with the Performance Evaluation Plan. The determination as to the amount of Performance Incentive Fee earned is a unilateral determination made by the Fee Determining Official.

(c.) The Contracting Officer will issue the Fee Determination Official's final total Performance Incentive Fee amount earned determination, and the basis of the Performance Incentive Fee determination, in accordance with: the schedule set forth in the Performance Evaluation Plan; or as otherwise set forth in this Contract. However, a determination must be made within seventy calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment report, or a different date if the Contractor and Contracting Officer agree. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made on or before December 15 each year (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30- day period.

(d.) Performance Incentive Fee not earned during the evaluation period shall not be allocated to future evaluation periods.

H-16 NNSA DIRECT CONTRACTS

(a) The Contracting Officer may identify any of the work identified or in support of the Contract's Section J Appendix entitled "Statement of Work" to be performed either by another contractor directly contracted by the NNSA or by Government employees. The Contractor agrees to fully cooperate with such other contractors and Government employees, carefully fit its own work to such other work as may be directed by the Contracting Officer, and provide reasonable support as required. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. For work identified for performance by another

contractor directly contracted by the NNSA:

1) The Government and the Contractor will confer in advance on the strategy for changing responsibility for the work and will do so with the objective of minimum disruption to the site operations.

2) The Government may designate the Contractor as the Technical Monitor for such contracts that are directly related to the scope of this Contract. The Contractor agrees to perform such monitoring duties as shall be further described in the designation for each such contract. No designation shall include, and the Contactor shall not perform, the following duties:

   (i) Award, Modification, change, or termination of the contract.

   (ii) Receipt, processing or adjudication of any claims, invoices, or demands for payment of any form.

   (iii) Any function determined to be inherently governmental.

3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer's Representative, any performance of a designated contract that may not be in compliance with its terms and conditions but is not authorized to take any other action regarding such noncompliance.

4) Additionally, the NNSA may insert provisions in such contracts substantially as follows:

   H-___. TECHNICAL MONITOR

   The Government may designate the Lawrence Livermore National Laboratory Management and Operating Contractor as Technical Monitor for any right, duty or interest in this contract. In that event, the contractor further agrees to fully cooperate with the Lawrence Livermore National Laboratory Management and Operating Contractor for all matters under the terms of the designation.

(b) Appropriate adjustments shall be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals.

H-17 CONTRACTOR EMPLOYEES

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the NNSA or the Government; however, nothing herein shall require the

establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

H-18 REPRESENTATIONS AND CERTIFICATIONS

The Representations, Certifications, and Other Statements of Offeror as completed by the Contractor are hereby incorporated in this Contract by reference.

H-19 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this Contract, a Contracting Officer shall be the only individual on behalf of the Government to:

(a) Accept nonconforming work;

(b) Waive any requirement of this Contract; or

(c) Modify any term or condition of this Contract.

H-20 PRIVACY ACT SYSTEMS OF RECORDS (Mod 877)

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract's Section I Clause entitled "Privacy Act."

DOE System No.	Title
DOE-5	Former Contractor Employees
DOE-31	Firearms Qualifications Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-45	Weapon Data Access Control System
DOE-48	Security Education and/or Infraction Reports
DOE-50	Human Reliability Program (HRP)
DOE-51	Employee and Visitor Access Control System
DOE-77	Physical Fitness Records

The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before the annual Contract update Modification but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in Paragraph (a)(1) of the Contract's Section I Clause entitled "Privacy Act."

H-21 FLOWDOWN OF RIGHTS TO PROPOSAL DATA

The Contractor shall include the clause of FAR 52.227-23 "Rights to Proposal Data (Technical)" in any subcontract awarded based on consideration of a technical proposal.

H-22 CONTINUATION OF PREDECESSOR CONTRACTOR'S OBLIGATIONS AND TRANSFER OF OBLIGATIONS TO SUCCESSOR CONTRACTOR (Mod 877)

(a) On October 1, 2007, the Contractor shall assume responsibility and will continue to perform any existing agreements and regulatory obligations entered into under Contract No. W-7405-ENG-48, by the predecessor contractor. These agreements and regulatory obligations include all (1) subcontracts and purchase orders; (2) agreements with domestic and foreign research organizations; (3) agreements with universities and colleges; (4) agreements with Federal, municipalities and state regulatory agencies; (5) operating permits and licenses; and (6) any other agreements in effect prior to October 1, 2007.

(b) The Contractor agrees that all obligations entered under this Contract shall be transferrable and assignable to the successor contractor as directed by the Contracting Officer. The Contractor shall enter good faith negotiations with any successor contractor and the Contracting Officer to execute a tri-party agreement that transfers, assigns, and/or identifies responsibilities for existing obligations. If, at the completion or termination of this Contract, the Contracting Officer does not direct the Contractor to transfer or assign obligation(s) to the successor contractor, the Contractor shall be liable, responsible, and accountable for closing out and liquidating such obligations, or for taking such other action as the Contracting Officer may direct. The Contractor shall remain liable to the Government and responsible for any unallowable costs which it incurred, or caused to be incurred, in performance of this Contract, regardless of whether they arise out of, or relate to, any obligations transferred or assigned to the successor contractor or to another entity.

H-23 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 Organizations. 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 Organizations shall each guarantee performance of the Contract as evidenced by a performance guarantee. The performance guarantee is set forth in the Contract's Section J Appendix entitled "Performance Guarantee."

(c) In the event any of the signatories to the performance guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H-24 SPECIAL HAZARDS

(a) The performance of the Contractor's operations hereunder may, in extraordinary circumstances, subject workers to special hazards for which workers' compensation laws, other statutes, the Contractor's welfare plan and policies, or the worker's private insurance may not provide adequate financial protection to the worker in the event of disability, or to the worker's estate in the event of death.

(b) Definitions.

(1) "Worker" as used in this clause shall mean any person who is or has been employed by the Contractor or any subcontractor, or who is or has been engaged as a consultant or borrowed personnel by the Contractor or any subcontractor.

(2) "Within the course and scope of employment" as used in this clause shall mean that the worker was performing duties as assigned, in conformance with the direction of the Contractor or a subcontractor or an agreement with the Contractor, and in furtherance of the work under this Contract.

(c) The Contractor is authorized to pay to a worker, or in the event of the worker's death, the worker's estate, a sum in an amount which the Contractor determines appropriate, not to exceed the worker's annual salary, whenever–

1. The Contractor believes that a worker has become disabled or has died as a result of any special hazard listed in paragraph (d) below to which the worker has been exposed within the course and scope of employment;

2. The Contractor believes that Workers' Compensation laws, other statutes, the Contractor's welfare plan and policies, or the worker's private insurance does not provide adequate financial protection under the particular circumstances of the worker's disability or death; and

3. The Contracting Officer approves the payment.

(d) The special hazards referred to in paragraphs (a) and (c) above are:

1.Exposure to radiant energy or emitted particles from radioactive materials or from high voltage sources or machines, including ingestion, inhalation or other bodily uptake of radioactive materials.

2.Exposure to explosions due to atomic disintegrations or to explosions in the course of experimental work with or using high explosives or propellants, or to explosions arising in the course of field experimentation with nuclear propulsion systems.

3. Exposure to toxic materials comprising polonium, uranium, plutonium, tritium, fluorine, barium, cadmium, beryllium, any compounds of these, phosgene, or any other material in use in the course of authorized work which may be shown to have toxic effects.

4. Work assignments not specifically covered in this clause and of such a nature as will invalidate the worker's personal insurance otherwise applicable to the injury or death and in effect at the time of performance of the assigned duties.

5. Exposure to hazards incident to flights in military aircraft in the course of which necessary experimental work is conducted. Where a release of liability has been signed, such release will in no way bar the worker from receiving any payment under this clause.

6. Exposure due to hazards from the fall of bombs or mockups from planes as opposed to hazards due to explosion.

7. Exposure in the course of employment incident to flights in chartered or military aircraft or transportation on military vessels. Where a release of liability has been signed, such release will in no way bar the worker from receiving any payment under this clause.

8. Exposure peculiar to and as the result of work assignment required to be conducted outside the continental United States.

9. Such other exposures not now known but which may later be discovered and which by the nature thereof are similar to the exposure or hazards set forth above.

10. Such other exposures may from time to time be agreed upon in writing by the Contractor and the Contracting Officer as a basis for payment.

(e) The total sum authorized to be paid under this clause to a worker or a worker's estate shall not exceed the worker's annual salary even where (1) a payment has been made to a worker on account of a disability and who thereafter dies as a result of the disabling injury or (2) a worker is disabled by one injury compensable under this clause and dies of a separate injury compensable under this clause. The Contractor assumes no obligation hereunder to make any payment from the Contractor's own funds. A release may be required from the payee if the Contracting Officer and the Contractor deem it necessary or appropriate.

(f) Whenever there is an injury or death which is compensable in accordance with paragraph (c) above, the Contractor may also, with Contracting Officer approval, pay for the cost of transportation (including hotel, subsistence and other incidental expenses) of the spouse and one or more of next of kin of such injured or dead worker from their respective homes to the place where such injured or dead worker shall be situated and their return.

H-25 DEFENSE AND INDEMNIFICATION OF EMPLOYEES

(a.) The Parties recognize that 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 the Contract's Section I Clause entitled "Payments and Advances", or the Major Fraud Act (41 U.S.C. §256(k)), 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 the Contract's 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 the Contractor determines under applicable law it must defend an employee in a criminal action which arises out of the performance of work under this Contract, NNSA will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If NNSA 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 because 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 for fraud, corruption, or malice on the part of the employee do not apply. A copy of any Contractor letter asserting a reservation of rights 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.

H-26 PERFORMANCE OF WORK AT FACILITIES AND SITES OTHER THAN LAWRENCE LIVERMORE NATIONAL LABORATORY (MOD 755, 793)

In performance of the Contract's work at DOE or NNSA facilities and sites other than LLNL, the Contractor shall comply with applicable requirements set forth in this Contract's Appendix entitled "List of Applicable Directives," and any additional directives which have been established for the DOE/NNSA Prime Contractor at that DOE/NNSA facility/site that are applicable to the Contractor's work being performed and that are applicable to the associated hazards at the particular facility or site.

H-27 OPEN COMPETITION AND LABOR RELATIONS UNDER MANAGEMENT

AND OPERATING AND OTHER MAJOR FACILITIES CONTRACTS

"Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

(a) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not -

(1) Require bidders, offerors, contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements, that apply to construction project(s) relating to this Contract; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this Contract.

(b) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, offerors, contractors, or subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.

(c) Nothing in this clause shall limit the right of bidders, offerors, contractors, or subcontractors to voluntarily enter into a project labor agreements.

H-28 THIRD PARTIES

Nothing contained in this Contract or its Modifications shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This clause is not intended to limit or impair the rights which any person may have under applicable Federal Statutes.

H-29 ADVANCE UNDERSTANDING REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS (Mod 432, 877)

Allowable costs under this Contract shall be determined according to the requirements of the Contract's Section I clause entitled "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:

(a) ITEMS OF ALLOWABLE COSTS:

1. Personnel costs in accordance with Appendix A attached to this Contract.

2. For contractor employees other than Key Personnel, expenditures by the

Contractor to reimburse other employers for payments (including, but not limited to, salaries) for any employees loaned to the Contractor for and engaged in the performance of the Contractor's undertaking hereunder.

3. 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.

4. Those reasonable indirect costs that are allocable to the direct costs incurred for NNSA Livermore Field Office space and effective October 1, 2013 the Office of the Inspector General space within the Laboratory site, including laboratory services and parking, and which indirect costs benefit the NNSA Livermore Field Office and the Office of the Inspector General.

(b) ITEMS OF UNALLOWABLE COSTS:

1. Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.

2. Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically provided in the Contract or specifically agreed to in writing by the Contracting Officer.

3. Facilities capital cost of money for the Contractor including its "teaming arrangement" as defined in FAR 9.601.

4. Meals, snacks, refreshment and catering services, except those allowable under NAP 520.1 Management and Operating Contractor Business Meals and Light Refreshments or as otherwise specifically agreed to in writing by the Contracting Officer.

5. Compensation of a Senior Executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy, are unallowable.

6. Key Personnel Bonuses (such as incentives, variable pay, sign-on, retention).

7. Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

H-30 SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with the Contract's Section I Clause entitled "Contractor Purchasing System", subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by NNSA. The Contractor and the Contracting Officer shall

develop a procedure whereby NNSA 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.

H-31 WALSH-HEALY PUBLIC CONTRACTS ACT (Mod 388)

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 that exceeds or may exceed $15,000.00 and is subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all stipulations required by said Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50), such stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor that are now or may hereafter be in effect."

H-32 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 other provisions of this Contract.

(b) The Contractor shall notify the Contracting Officer promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H-33 WORKERS' COMPENSATION (Mod 915)

(a) The Contractor shall maintain workers compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the Contracting Officer and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.

(b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless the Contracting Officer approves a different arrangement.

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

H-34 ADDITIONAL LABOR REQUIREMENTS (Mod 287, 877)

(a) The Contractor and the Contracting Officer will develop a procedure whereby NNSA will determine if the Construction Wage Rate Requirements (a.k.a. Davis Bacon Act) is applicable to particular subcontracts. The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by NNSA on all Construction Wage Rate Requirements activity, including any subcontracts, as may be necessary to determine compliance with the Construction Wage Rate Requirements. Where violations are found, the Contractor shall report them to the 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 furnish a Construction Wage Rate Requirements Semi-Annual Enforcement Report to NNSA by April 21st and October 21st each year.

(b) 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 NNSA and or/the Department of Labor in the investigation of any alleged violations or disputes involving Federal labor standards.

(c) When appropriate, the Contractor may perform direct construction using direct hire employees. Requirements for the work are covered by FAR 52.222-6 Construction Wage Rate Requirements which is incorporated by reference into this contract.

H-35 WORKFORCE TRANSITION, CONTRACTOR COMPENSATION, BENEFITS AND PENSION (Mod M042, 196, 287, 388, 432, 591,674, 745, 810, 817, 877)

(a) Personnel Appendix

(1) This Clause and the Contract Section J Appendix entitled “Personnel Appendix” are adopted for the exclusive benefit and convenience of the Parties hereto; nothing contained herein shall be construed as conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. This Clause and the Personnel Appendix reflect NNSA’s advance understanding on cost allowability for contractor human resources requirements. Changes, if any, will be made to the Personnel Appendix through a Contract Modification. Personnel costs and related expenses incurred in accordance with the Personnel Appendix shall be allowable to the extent indicated therein.

(2) Definitions

(i) “Transferring Employees” are those employees (other than Inactive Vested Transferring Employees as defined below) who transfer from

employment with the predecessor contractor to employment with the Contractor as of the start of the first day of the Basic Term of the Contract.

(ii) "Inactive Vested Transferring Employees" are those employees who transfer from employment with the predecessor contractor to employment with the Contractor prior to the first day of the Basic Term of the Contract, who do not elect to retire under the University of California Retirement Plan (UCRP) as of the first day of the Basic Term of the Contract, and who remain vested participants as "inactive members" of the UCRP.

(iii) "UCRP Retiring Employees" are employees of the predecessor contractor who elect to retire under the UCRP prior to first day of the Basic Term of the Contract and who have the same rights with respect to hiring and terms and conditions of employment as New Employees (as defined below).

(iv) "New Employees" are those employees hired by the Contractor on or after the first day of the Basic Term of the Contract who are not Transferring Employees or Inactive Vested Transferring Employees.

(b) Employee Retention

(1) Subject to the availability of funds, the Contractor shall offer employment to all employees of the predecessor contractor who as of the start of the Contract period of performance are in good standing and have LLNL "Career" or "Term" appointments as described in the LLNL Personnel Policies and Procedures Manual, except as set forth in subparagraph (b)(2) below. Subsequently, the Contractor shall exercise appropriate managerial judgment regarding employee retention and job assignments.

(2) The Contractor is not required to offer employment to those employees assigned to the predecessor contractor's key personnel positions. In addition, the Contractor is not required to offer employment to UCRP Retiring Employees. The Contractor may offer employment to these categories of employees at its sole discretion.

(c) Labor Relations

(1) 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.

(2) The Contractor is authorized to enter into labor agreements and administer such agreements in accordance with their negotiated terms subject to the

following requirements:

(i) The Contractor shall 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 as supplemented by DEAR Subpart 970.2201 and all applicable Federal and State labor laws.

(ii) The Contractor shall submit to the Contracting Officer for the purpose of reviewing the Contractor's bargaining objectives 60 days prior to negotiating any collective bargaining agreement, extension or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which could increase 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 in advance before proposing or agreeing to changes in compensation, pension, or any other benefit plan.

(iii) The Contractor shall notify the Contracting Officer in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practices, work stoppages, picketing, labor arbitrations and settlement agreements, and will discuss economic parameters for negotiations before the start of any labor negotiations.

(3) The Contractor will provide regional wage survey information, a compensation analysis, and any other information to support the collective bargaining cost figures set forth in the Contractor's request for parameters and other items requested by the Contracting Officer.

(4) The Contractor shall advise the Contracting Officer within twenty-four hours of the following:

(i) Possible strike situations or other actions affecting the continuity of operations including work stoppages and picketing;

(ii) Formal action by the National Labor Relations Board (NLRB) Including but not limited to, issuance of a complaint against the Contractor. Copies of complaints, settlement agreements, judgments and any other documents issued in connection with Contractor actions with respect to labor practices shall be provided to the Contracting Officer

(d) Salary and Benefits

(1) Compensation Packages

(i) Transferring Employees (Not including Inactive Vested Transferring Employees)

(I) The Contractor shall provide a total compensation package for Transferring Employees (including for Safety Members, as defined in UCRP plan documents, who otherwise qualify as and choose to become Transferring Employees) that is substantially equivalent to that provided by the predecessor contractor as of the last day of the Transition Term of the Contract. The Contracting Officer in his/her sole discretion will determine substantial equivalency by comparing the Contractor's total compensation package with the benefits provided by the predecessor contractor; provided, however, that the Contractor's total compensation package must include UCRP age factors as a basis for determining compensation, substantially equivalent pension and other benefits, must maintain the base salaries of the Transferring Employees, and shall comply with the requirements of paragraph (e), pensions, set forth below.

(II) Transferring Employees shall carry over the length of service credit and vacation and sick leave balances accrued under the predecessor contract as of the date of transfer to the Contractor. Paragraph (d) (6) (iv below does not apply to evaluating the reasonableness of benefits for Transferring Employees. The Contractor shall consider amending benefits for Transferring Employees to be consistent with any changes made by the Board of Regents of the University of California to employee benefits during the term of this Contract.

(III) The retiree medical benefit plan for Transferring Employees must include service based eligibility requirements substantially equivalent to existing requirements for retiree medical benefits under the predecessor contract that specify a minimum of 5 years continuous service under a DOE Contract(s) immediately prior to retirement in order to qualify for retiree medical benefit coverage. DOE Contract means for purposes of this paragraph: (1) a DOE management and operating contract, or (2) any other contract where work had been previously performed under a DOE management and operating contract and the successor Contractor is (a) required to employ all or part of the former Contractor's workforce and sponsors the employee pension and benefit plans; or (b) retains sponsorship of benefit plans that survive performance of the contract work scope. Contracts in this latter category include, but are not limited to,environmental remediation, infrastructure services and other site-specific project completion contracts.

(ii) New Employees, Inactive Vested Transferring Employees and UCRP Retiring Employees.

a. For New Employees, Inactive Vested Transferring Employees and UCRP Retiring Employees, the Contractor shall provide a total compensation package that is market based and that will allow the Laboratory to recruit and retain critical scientific, technical, and engineering skills to develop the next generation of scientific personnel necessary to successfully carry out its mission. In addition, any total compensation package shall comply with the requirements of paragraph (e), pensions, as set forth below. Cost reimbursement of benefit plans will be consistent with the approved "Relative Benefits Value Index (RBVI)" and "Employee Benefit Cost Comparison (Cost Comparison)" as described below in paragraphs (d)(6)(i-iv).

b. Inactive Vested Transferring Employees shall carry over length of service credit for calculation of retiree medical benefits, for calculation of the rates of accrual of vacation and sick leave, for calculation of severance pay (subject to paragraph (d)(3) below); and for determination of eligibility to participate in a defined contribution pension plan, and the calculation of benefits under any defined contribution plan, if the Contractor offer such plans. However, Inactive Vested Transferring Employees who retire under UCRP and opt for a lump sum distribution of pension benefits shall not be eligible to receive retiree medical benefits under the Contract based on their years of service with the predecessor contractor. In addition, Inactive Vested Transferring Employees shall carry over vacation and sick leave balances accrued under the predecessor contract as of the date an employee transfers to employment with the Contractor. When an employee has opted to receive payment or service credit from the predecessor contractor for some or all of the accrued vacation and/or sick leave, only the balances for which the employee did not receive benefit from the predecessor contractor shall carry over to the Contract.

(iii) The total compensation packages described in subparagraphs (i) and (ii) above are subject to the Contracting Officer's review and approval.

(3) Wages and Salaries

(i) The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system. The Contractor's compensation system shall be in accordance with FAR 31.205-6 as supplemented by DEAR 970.3102-05-6, fully documented, consistently applied, and acceptable to the Contracting Officer.

(ii) The Contractor shall submit the following to the Contracting Officer for approval in writing and in advance:

(I) Any proposed major compensation program design changes 60 days prior to implementation.

(II) An Annual Compensation Increase Plan (CIP) by the beginning of each succeeding calendar year. Contracting Officer approval is not required for the CIP under the following circumstances: 1) the CIP submission is equal to or less than the salary increase projection (e.g. World at Work projection); and 2) NNSA does not notify the Contractor of any questions or concerns that may negate the cost allowability. NNSA will provide notification within the two weeks following the Contractors submission (date will be identified in the annual NNSA CIP guidance). Contracting Officer approval is required for the CIP under the following circumstances: (1) the CIP percent exceeds the professionally recognized salary budget survey's salary increase projection (e.g. World at Work projection provided in the annual NNSA CIP guidance); (2) the Contractor's position to market warrants less than the survey's salary increase projection such that application of the CIP at the full increase projection, would result in the overall position to be above market; and/or (3) the Contractor's overall position to market is above market.

(III) Contracting Officer approval is required for initial compensation requests for new/replacement key personnel and approval of the increases to the top contractor official. The request shall include supporting justification related to internal and external/market equity, individual performance, the Application for Contractor Compensation Approval Form (DOE 3220.5), and the Compensation Subject to the Compensation Cap Table. This documentation shall be provided to the Contracting Officer at least 30 days before the proposed effective date of the action.

(IV) The reimbursed salary of the Contractor's top official will serve as the maximum allowable salary reimbursement level. Notwithstanding any other term or condition set forth in the Contract, the compensation reimbursed by the Government for each of the Contractor's Key Personnel shall not exceed the Office of Federal Procurement Policy (OFPP) Executive Compensation cap per fiscal year, adjusted annually based on the Employment Cost Index (ECI), as determined by Section 702(a)(1) of the Bipartisan Budget Act of 2013, P.L. 113-6 (December 26, 2013), codified at 41 U.S.C. § 4304(a)(16). Any Key Personnel bonuses and associated burdens are considered unallowable costs.

(V) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk) 60 days prior to implementation.

(iii) NNSA will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals may be

conducted by NNSA, by validation of Contractor self-assessments of compensation system performance, a third-party expert, or any other method directed by the Contracting Officer.

(4) Severance Pay

(i) Severance pay benefits will not be reimbursed under this Contract to an employee if the employee:

(I) Voluntarily separates, resigns or retires from employment,

(II) Is offered employment with a successor/replacement contractor,

(III) Is offered employment with the parent or an affiliated company of the Contractor,

(IV) Is discharged for cause, or

(V) Is Currently in a Key Personnel position.

(ii) For all Transferring Employees and Inactive Vested Transferring Employees, the Contractor shall carry over the length of service credit accrued for eligibility for severance pay under service for the predecessor contractor as of the date of transfer to the Contractor. Service credit does not include any period of prior service at a DOE/NNSA facility for which severance pay has been previously paid.

(5) Reporting Requirements

The Contractor shall provide the following reports with respect to salary and benefits reimbursed under this Contract for all employees to the Contracting Officer:

(i) Annual Contractor Salary-Wage Increase Expenditure Reports to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved CIP amounts.

(ii) Compensation and Benefits due annually by March 15.

(iii) Benefits reports as may be required from time to time by the Contracting Officer.

(iv) Salary Plus Bonuses reports as may be required from time to time by the Contracting Officer.

(6) Allowability of Pension and Other Benefits Costs

Prior to changing any employee benefit, the Contractor shall obtain Contracting Officer approval in writing and in advance of the changes that increase cost, long term liabilities, or are contrary to written Departmental policy. No presumption of allowability associated with a change will exist unless approved by the Contracting Officer.

(7) Benefit Evaluations

(i) The Contractor shall participate and submit the NNSA Consolidated Employee Benefits Value Study (Ben Val) for non-bargaining employees to the Contracting Officer by July 31st every two years. An Employee Ben Val 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 comparator companies. The Contractor shall use the comparator companies used in the last Consolidated Employee Ben Val. When the net benefit value for non- bargaining employees exceeds the comparator group average by more than five percent, the Contractor may be required to submit a corrective action plan to the Contracting Officer, describing the specific actions they plan to take to get to the 105%, no later than 60 days after the Ben Val is submitted.

(ii) A Ben Val for bargaining unit employees shall be submitted to the Contracting Officer no later than 6 months prior to the end of the collective-bargaining agreement. The Ben Val Study for bargaining unit employees must include at least 15 comparator companies approved by the Contracting Officer.

(iii) For non-bargaining and bargaining unit employees, if any of the comparator companies no longer participate, the Contractor shall recommend replacement companies for approval by the Contracting Officer.

(iv) For non-bargaining and bargaining unit employees, the Contractor shall include major non-statutory benefit plans offered by the Contractor, including qualified defined contribution (DC) retirement plans; capital accumulation plans; and death, disability, health, and paid time off welfare benefit programs in its Ben Val.

(v) For non-bargaining and bargaining unit employees, M&O Contractor DB plans, closed to new entrants, are not included in the Ben Val Measurement.

(vi) An Employee Benefits Cost Study Comparison (Cost Study), shall be completed annually and submitted to the Contracting Officer by July 31st. The Cost Study must utilize a professionally recognized measure approved by the Contracting Officer that analyzes the Contractor's employee benefits cost for employees as a percentage of payroll and compares it with the cost as a percentage of payroll including geographic factor adjustments, reported by the U.S. Labor's Bureau of Labor Statistics or other Contracting Officer approved

comparator group or broad-based national benefit cost study. For non-bargaining and bargaining unit employees, M&O Contractor DB plans, closed to new entrants, are not included in the Benefit Cost Study measurement.

(vii) When the average of the Contractor's Cost Study, discussed in (vi) above, total benefit costs for the non-bargaining employees as a percentage of payroll, exceeds the comparator group by more than five percent, the Contracting Officer may require the Contractor to submit an analysis of the specific plan costs that result in or contribute to the percentage of payroll exceeding the costs of the comparator group. Based on this analysis, the NNSA will determine whether a corrective action plan is necessary.

(viii) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, the Contractor should implement the actions identified in the corrective action plan, to align employee benefit programs with the benefit value and benefit cost study requirements.

(8) Service Credit for Parent Organization Members

(i) Parent Organization Member employees who receive retirement benefits accrued from prior employment with a parent organization member on, before, or within one year from the day they commence work at LLNL are not considered to be transferred employees, are not eligible for this benefit adjustment, and such employees will be considered as new employees for these purposes.

(ii) Parent Organization Members hired directly with no break in service from: (1) University of California, Bechtel, BWXT, and the Washington Group (collectively referred to as "LLNS Parent Companies") or (2) any company partially or fully owned by the University of California (excluding UC LLNL), Bechtel, BWXT, or the Washington Group (collectively referred to as "Affiliates of LLNS Parent Companies") will be considered transferred employees unless (7)(i) above applies.

(I) LLNS will credit the continuous or credited service date (no break in service) recognized by the LLNS Parent Companies or the Affiliates of LLNS Parent Companies from which the employees transfer for vacation accrual, sick leave accrual, eligibility for the TCP2 401K savings plan, service awards, and eligibility for access-only retirement medical plans for transferred employees.

(II) In addition to the above, LLNS will credit service for subsidized retiree medical and severance benefits as specified below, for prior work on Department of Energy, National Nuclear Security Administration, and Naval Reactors (collectively referred to as "DOE") Management & Operating (M&O) contracts and facility management contracts. These include current M&O and facility management contracts as well as

prior DOE management and operating contracts where a successor contractor was required to employ all or part of the former contractor's workforce and sponsor the existing site employee pension and benefit plans, and DOE was reimbursing the contractor, as a direct cost, for employee pension and benefit plans.

(A) For determining eligibility and earned benefit level for LLNS subsidized retiree medical benefits, reimbursement of post-retirement health benefits is limited to employees who prior to retirement, worked at least the five previous years under DOE or NNSA M&O or facilities management cost reimbursement contracts and only for those periods of prior service when employer-subsidized postretirement medical benefits were part of the employee's benefits package. Such service will be frozen upon transfer to LLNS.

(B) Service credit for severance pay does not include any period of prior service at a DOE/NNSA facility for which severance pay has been previously paid.

(e) Pension Plans

(1) The Contractor shall sponsor at least two site-specific separate pension plans that cover site employees, including any pension plan spun off by the predecessor contractor. The pension plans sponsored by the Contractor shall include: "Pension Plan One," which shall cover Transferring Employees (including those Safety Members of UCRP who otherwise qualify as and choose to become Transferring Employees) and not Inactive Vested Transferring Employees, and "Pension Plan Two," which shall cover New Employees, Inactive Vested Transferring Employees, and UCRP Retiring Employees hired by the Contractor.

(2) All Pension Plans shall meet the requirements of the Internal Revenue Code (IRC) and Employee Retirement Income Security Act of 1974 (ERISA), as applicable, and shall be distinct from any corporate or other pension plan. Each pension plan shall cover only Contractor employees working under this Contract.

(3)

(i) Pension Plan One. The Contractor shall consider amending Pension Plan One to be consistent with any changes made by the Board of Regents of the University of California to the UCRP during the term of this Contract. For Transferring Employees (including those Safety Members of UCRP who otherwise qualify as and choose to become Transferring Employees) and not Inactive Vested Transferring Employees, Pension Plan One shall include UCRP age factors, preserve accrued benefits and recognize service credit earned under the predecessor contractor's retirement plans including the UCRP.

(ii) Pension Plan Two. For New Employees, Inactive Vested Transferring Employees and UCRP Retiring Employees hired under this Contract, the Contractor shall provide a pension benefit package that is market-based (as defined in (d)(6)(iv) and competitive for the industry and which will allow the Contractor to recruit and retain the appropriate personnel to assure that LLNL continues to successfully carry out its mission.

(I) For Inactive Vested Transferring Employees, and Transferring Employees not vested in UCRP who choose to participate in Pension Plan Two prior to the end of the Transition Term, Pension Plan Two shall recognize service earned under the UCRP for purposes of determining eligibility for benefits and vesting and the level of employer contribution but shall not otherwise recognize prior service for calculation of benefits under Pension Plan Two. The Transferring Employees not vested in UCRP who choose to participate in Pension Plan Two prior to the end of the Transition Term shall thereafter be subject to the provisions of the Contract which apply to Inactive Vested Transferring Employees.

(II) UCRP Retiring Employees hired under this Contract shall not receive credit under Pension Plan Two for service under the predecessor contract.

(4) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with law and regulation.

(5) The Contractor shall obtain an independent audit annually of each pension plan, which provides the accounting details specified by ERISA Sections 103 and 104.

(6) In addition to the information required under paragraph (d) (6) above, prior to making changes to a pension plan the Contractor shall submit the information required under subparagraphs (i) and (ii) below for approval at least 60 days in advance and in writing that the costs proposed to be incurred are consistent with the Contractor's pension plans and will be deemed allowable. When changes to any pension plan are required by law, or the changes do not increase costs or liabilities under the plan, approval is not required provided the Contractor submits a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout no later than 60 days before the new amendment is proposed to take effect.

(i) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value and any other information of special interest to the Government.

(ii) A clean copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout.

(iii) For any proposed special programs (including, but not limited to, early retirement programs, window benefit programs, disability programs, plan-loan features, employee contribution refunds, asset reversions, or ancillary benefits), an analysis of the impact of special programs on the actuarial accrued liability of the pension plan, and on relative benefit value and cost, if applicable.

(iv) For any proposed special programs (including, but not limited to, early retirement programs) that augment or potentially augment in any way the benefit of any plan participant, a compelling reason that the proposal should be approved.

(7) Pension Management Plan (PMP) & Post Retirement Benefit (PRB) Management Plan.

No later than January 31 of each applicable year, The Contractor shall submit a Pension Management Plan and Post-Retirement Management Plan for management and administration of its DB pension and PRB plans consistent with the terms of the Contract via iBenefits by January 31st of each applicable year. The Pension Management Plan shall include but is not limited to the DB plans' projected assets, projected liabilities, and estimated contributions. A full description of the Contractor's required reporting will be provided in the annual management plan data request. Within 60 days after the date of submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP and PRB submission and any other current plan issues or concerns.

(8) The Contractor shall provide (1) written notice to the Contracting Officer of individuals transferring from non-LLNL operations (including but not limited to operations of parent or affiliated entities of the Contractor) to LLNL operations, and vice-versa, on a quarterly basis, and (2) any additional information as directed by the Contracting Officer.

(9) Pension Plan Terminations

(i) The Contractor shall not terminate any pension plan covering any site employee without at least 60 days' notice to and the advance written approval of the Contracting Officer prior to the scheduled date of plan termination.

(ii) After all liabilities of the plan are satisfied, the Contractor shall return to NNSA an amount equaling the asset reversion from the plan termination and interest as determined pursuant to the

Contract's Section I Clause entitled "Interest" that has accrued on that amount because of a delay in the payment to NNSA. The Contracting Officer and the Contractor will agree to a schedule of payments. The Contracting Officer shall determine the method of payment.

(iii) The amount of asset reversion and interest is subject to audit consistent with Contracting Officer direction.

(f) Contract Expiration or Termination with a Follow-on Management and operating Contract

If the Contract expires, or is terminated and an award is made to a follow-on management and operating contractor, as a part of the transition to another entity and in accordance with Contracting Officer direction and applicable law the Contractor shall transfer sponsorship of site-specific pension and other benefit plans covering employees at the Laboratory to the follow-on management and operating contractor.

(g) Contract Expiration or Termination without a Follow-on Management and Operating Contract

If this Contract expires or terminates without a follow-on management and operating contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, including but not limited to the Contract's Section I Clause entitled "Termination," the following actions shall occur:

(1) The Contractor shall continue as plan sponsor of all existing pension and welfare benefit plans covering site personnel, with continuing responsibility for management and administration of the plans, as directed by the Contracting Officer in his/her sole discretion.

(2) The Contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer for benefit continuation.

(3) Pension plan contributions, plan asset management and administration costs, PRB costs and other applicable costs will continue to be allowable and fully reimbursable consistent with the terms of this Contract and in accordance with the applicable law and otherwise as acceptable to the Contracting Officer.

(4) The Contracting Officer shall provide written direction regarding the provision of post-contract pension and other benefits as he/she deems necessary.

(h) Work Force Planning

(1) The Contractor shall analyze workforce requirements consistent with current and future mission requirements. The Contractor shall develop a written plan

describing appropriate workforce strategies and how it will ensure appropriate skills to perform the current mission work and the anticipated future mission work across the NNSA's Future Years Nuclear Security Program (FYNSP). The document and analysis shall include a discussion of the following topics: overall workforce look, identification of critical and essential skills, future hiring needs for the site including in critical skills areas, plans to recruit and retain individuals possessing critical skills, and the impact of anticipated retirements or other attrition. This workforce plan shall be provided to the Contracting Officer no later than November 30th each year.

(i) Post Retirement Benefits

(1) The Contractor shall become the sponsor and be responsible for management and administration of a retiree medical benefit plan that will provide medical insurance benefits (including dental) substantially equivalent to those provided by the predecessor contractor to individuals who meet eligibility requirements under the plan and who retired from employment at LLNL with the predecessor contractor as of the first day of the Basic Term of the Contract. The Contracting Officer will determine substantial equivalency by comparing the Contractor's retiree medical benefit plan with the benefits provided by the predecessor contractor.

(2) The Contractor may change retiree medical benefits after contract execution. Changes shall be based on a comparison and analysis to industry practices. Prior to making any changes to retiree medical benefit plans, the Contractor should obtain Contracting Officer approval at least 60 days prior to implementation. No presumption of allowability associated with a change will exist unless approved by the Contracting Officer.

(3) Unless required by Federal or State law, advance funding of PRBs, other than pensions, is not allowable.

H-36 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 "DEAR 952.204-75 Public Affairs" is intended to limit the rights of the Contractor or its employees to publicize and to accurately state the results of its scientific research.

H-37 CONFLICTS OF INTEREST COMPLIANCE PLAN

The Contractor shall submit a Conflicts of Interest (COI) Compliance Plan to the Contracting Officer for approval within 90 days after the award date of this Contract. The COI Compliance Plan shall address the Contractor's approach for adhering to the Section I Clause entitled “Organizational Conflicts of Interest – Alternate I” and describe its procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The overall purpose of the COI Compliance Plan is to demonstrate how the Contractor will assure that its operations meet the highest standards of ethical conduct, and how its assistance and advice are impartial and objective. The COI Compliance Plan shall specifically address:

(a) How actual or potential COI issues will be identified and either mitigated, resolved, or avoided during contract performance;

(b) How the Contractor will ensure its work force is aware of and complies with Organizational Conflicts of Interest and COI Compliance Plan requirements;

(c) How the Contractor will ensure that the activities of the Contractor’s Parent Organization(s) and affiliated companies are consistent with its COI Compliance Plan; and

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

H-38 LOBBYING RESTRICTIONS

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.

H-39 MENTOR-PROTÉGÉ PROGRAM

The Contractor shall establish a Mentor-Protégé Program to assist small businesses, firms

certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small business, 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 at the Laboratory. The Contractor shall provide details of its Mentor- Protégé Program to the Contracting Officer for review and approval.

H-40 ADDITION AND ALTERATIONS TO IMPLEMENT EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY AND TRANSPORTATION MANAGEMENT AND ITS IMPLEMENTING INSTRUCTIONS (Mod M034)

This contract involves contractor operation of Government-owned facilities and/or vehicles and the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or vehicles. Information on the requirements of the Executive Order and its Implementing Instructions may be found at http://ofee.gov/Executive Order/Executive Order13423_main.asp. This requirement includes the Electronics Stewardship requirements of Implementing Instruction XII. When acquiring desktop or laptop computers and computer monitors, the Contractor shall acquire Electronic Product Environmental Assessment Tool registered products conforming to IEEE 1680-2006 Standard and ranked at least bronze, provided such products are life cycle cost efficient and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

H-41 NON-FEDERAL AGREEMENTS FOR COMMERCIALIZING TECHNOLOGY (APR 2018) (Mod 287, 521, 674)

This clause authorizes the use of the mechanism: Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessary aimed at commercialization (e.g., technical assistance, training, studies), but which facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated with this M&O contract for the purposes of conducting technical services1, training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor's custody or available to the M&O Contractor under this M&O contract (unless specifically excluded by the Contracting Officer). For M&O Contractor activities conducted under authority of this Clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph 9 below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the M&O Contractor is authorized to negotiate separate

ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

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

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

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

3. Conditions for Participation in ACT. The M&O Contractor:

    a. Must not perform ACT activities that would place it in direct competition with the private sector;

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

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

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

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

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

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

DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN LLNS AND [THE OTHER IDENTIFIED PARTY]. THE UNITED STATES GOVERNMENT IS NOT A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

4. Contracting Authority.

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

b. The M&O Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT agreement. A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a Statement of Work; an estimate of costs incurred under the M&O contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011-013; a signed certification by the private party(ies) that the M&O Contractor offered the option to use CRADA and SPP alternatives (see paragraph 7a) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized to fund the agreement except as authorized under the FedACT pilot (see paragraph 14 below); applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.

    i. If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph 7).

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

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

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

    i. The M&O Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three (3) business days. Upon such a determination from the Contracting Officer, the M&O Contractor may begin work under the ACT agreement at the M&O Contractor's risk pending final approval of the complete Package. The M&O Contractor must submit a complete Package, as identified in subparagraph 4.b. above, within (10) business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the M&O Contractor, as no Federal funds will be used to fund any work conducted under this Clause.

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

5. Advance Payment for ACT Projects. The M&O Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this Clause consistent with procedures defined in the Department's Financial Management Handbook. The M&O Contractor shall be solely responsible for collecting payments from third parties

for any work conducted under this Clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the M&O Contractor's work under this Clause, the M&O Contractor is entirely at risk and the Government shall have no risk.

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

    a. Work conducted under this Clause shall be excluded from the M&O contract award fee calculations and such fee shall not be allocable to work conducted under this Clause.
    b. Federal funds will not be used to fund work conducted under this Clause except as authorized under the FedACT pilot (see paragraph 14 below).

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

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

    b. Priority of Work. The M&O Contractor shall not give work under ACT any

special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the M&O Contractor's input.

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

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

8. Intellectual Property. Disposition of intellectual property (IP) arising from work conducted under this Clause shall be governed by Class Waiver W(C)-2011-013 (ACT Class Waiver) which is incorporated herein by reference.

a. All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the [cite Patent Rights –M&O contract, Nonprofit Organization or Small Business Firm Contractor] clause of this M&O contract.

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

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

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

e. Where the M&O Contractor receives ownership or license rights to ACT IP,

the M&O Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this M&O contract.

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

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

h. Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.

9. Contractor Liability and Indemnification.

a. General Indemnity.

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

(ii) Subject to Contracting Officer approval, the General Indemnity set forth in (i) above may be Modified or waived where: (1) ACT participants are not providing material or equipment to the M&O Contractor to be used in the performance of the Statement of Work under the ACT transaction; and (2) ACT participants are not sending their employees to the M&O facilities as part of the Statement of Work; and (3) the specific activities performed under the ACT

transaction are normally performed by the DOE M&O Contractor under the DOE contract.

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

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

c. Product Liability Indemnity.

(i) Except for any liability resulting from any negligent acts or omissions of the Government, the M&O Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the ACT participants or the M&O Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. With respect to this Clause, neither the Government nor the M&O Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the M&O Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the M&O Contractor. No settlement for which the M&O Contractor would be responsible shall be made without the M&O Contractor's consent, unless required by final decree of a court of competent jurisdiction.

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

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

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

f. Insurance. Any cost of insurance to cover risks of the M&O Contractor associated

with ACT agreements is unallowable under this contract.

10. ACT Records. All records associated with the M&O Contractor's activities conducted under the authority of this Clause, with the exception of information required under paragraphs 3e, 4.b.i, and 13 shall be treated as M&O Contractor-owned records under the provisions of the Access to and Ownership of Records clause of this M&O contract. The Government or its designees shall use such records in accordance with applicable Federal laws (including the Privacy Act), as appropriate.

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

12. Successor M&O Contractor. To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor M&O

Contractor, ACT agreement(s) executed under this Clause and any contractual instruments associated therewith may be novated to the successor M&O Contractor with the mutual consent of the M&O Contractor, the successor M&O Contractor, and the parties to the affected ACT agreement(s). If the ACT agreement(s) cannot be novated, then the M&O Contractor as a private sponsor shall be permitted to enter into a Non-Federal SPP agreement with the successor M&O Contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE SPP policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT agreement.

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

14. Fedak Pilot. Under this paragraph the DOE is authorizing a 3-year pilot program for Federally funded ACT (FedACT). FedACT contracts are ACT agreements between the M&O Contractor and a non-Federal third party partner, where a portion of the project funding originates from a Federal agency (i.e., Federal appropriations). In most cases, the industry partner's original source of funds will have been as a result of a contract or financial assistance award from the Federal agency. Any agreement that includes Federal funds must be performed under the FedACT pilot. Federal funds used to support a FedACT project must solely be used to carry out the purposes of the Federal award. FedACT does not include agreements directly funded from another Federal agency. DOE and the M&O Contractor recognize that FedACT is a new mechanism and subject to Modifications as more data and experience are realized. During the FedACT pilot either party may suggest changes to the program based on the experiences gained. Furthermore, the M&O Contractor recognizes that the Department may decide to end the FedACT pilot at any time and that termination of the FedACT pilot by the Department will be in accordance with this paragraph. During the FedACT pilot the M&O Contractor is permitted to negotiate and execute such agreements, subject to DOE approval, as

described in paragraph 4 above and as set forth herein. The following additional requirements apply:

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

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

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

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

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

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

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

f. Advance payment requirements in Section 5 equally apply to FedACT agreements.

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

h. Termination. The FedACT Pilot implemented by this Clause will terminate three years from the date AL 2018-07 is issued, unless renewed by the Contracting Officer. The Government may provide the M&O Contractor with written notice to terminate the M&O Contractor's authority to conduct FedACT work under this Clause at any time. If the Contractor's authority to conduct FedACT work under this Clause has expired or been terminated, the M&O Contractor will be permitted, subject to any other provisions of this Clause, to complete any FedACT work that had been approved by DOE prior to this Clause being terminated by the Government.

H-42 CONFERENCE MANAGEMENT (MAR 2023) (Mod 353, 450, 555, 845)

The Contractor agrees that:

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

(b) For the purposes of this clause, "conference" is first defined by the Federal Travel Regulation (FTR) as "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404." Additionally, the Department's conference activity reporting guideline expands the FTR conference definition to disregard attendee travel as a determining factor, i.e., reporting can be required without the existence of attendee travel.

(c) Contractor-sponsored conferences include those events that meet the Department's expanded conference definition, and a DOE contractor holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates, and conference participation.

(d) Merely providing the contractor's facility space for a conference, or contractor staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote contractor sponsorship.

(e) The contactor will provide information on conferences they plan to sponsor, when expected costs exceed $100,000 in net costs to the Department, in the Department's Conference Management Tool (CMT), including:

1) Conference title, description, and date

2) Location and venue

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

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

5) Costs for space, food/beverages, audio visual, travel/per diem, attendee registration costs

6) Number of attendees

(f) The contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the contracting officer and approved by the corresponding federal executive oversight entity.

(g) For DOE-sponsored conferences (i.e., sponsored by a Departmental Element), the contractor will not expend funds on the proposed conference that exceeds $100,000 in net estimated DOE cost, until it is approved in the CMT by the management of the Departmental Element sponsoring the conference,

1) DOE-sponsored conferences include events that meet the Department's expanded conference definition, and a Departmental Element holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates and conference participation.

2) Merely providing Federal facility space for a conference, or Federal staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote DOE sponsorship.

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

(h) For conferences sponsored by a non-DOE external entity, the contractor shall develop and implement a process to ensure costs related to such conferences are tracked, allowable, allocable, reasonable, and further the mission of DOE/NNSA.

H-43 FEDERAL FLEET MANAGEMENT SYSTEM (FEDFMS) (Mod 491)

When the Contracting Officer has issued the Contractor authorization to obtain interagency fleet management system vehicles in performance of the contract, the Contractor shall follow the requirement of the Federal Fleet Management System known as FedFMS. The Contractor shall provide the information needed to satisfy the reporting requirement as stated in FedFMS on a monthly basis using the Fleet Management Information System. The contractor shall also address any of the data gaps/incomplete records that already exist.

H-44 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT

REPORTING (NOV 2017) (Mod 568, 674)

(1) Definitions. As used in this clause—

(a) "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.

(b) "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.

(c) "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.

(d) 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-45 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 (MAR 2021) (Mod 735, 754, 761, 767, 774)

(a) The Contractor may submit for reimbursement and the Government (without requiring consideration but precluding additional fee) 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 CARES 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.

(End of Clause)

H-46 Reserved (Mod 762, 854)

H-47 Reserved (Mod 781, 892)

H-48 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (Mod 802)

The Contractor agrees that:

(a) No cost associated with implementation or enforcement of 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 the Department of Justice, that are essential to reporting a substantial violation of law

H-49 DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM PRIORITY RATING (Mod 845, 885)

(a) DPAS-Rated Order. As indicated in Block 1 of SF33, this contract is a DX- and DO-rated order certified for national defense use (subject to limitations in (b) below) and the Contractor is required to follow all the provisions of the Defense Priorities and Allocations System (“DPAS”) regulations (15 CFR § 700, *et seq*.). In the event that any provision of the DPAS regulations conflict with any provision of this clause, the DPAS regulations control.

(b) Scope of DPAS Rating. Though this contract is rated as DX and DO, only those portions of this contract for materials (including equipment), services, or facilities necessary for the national defense, as outlined in (b)(1) and (b)(2), are considered rated. The authority granted under this clause is not applicable to Strategic Partnership Projects (SPP) (see (g)).

(1) DO. Items and related services in support of programs approved for priorities and allocations support by the Secretary of Defense with respect to military production and construction, military assistance to any foreign nation, space, stockpiling, and directly related activities are rated as DO upon establishment

of a required delivery date (see (c)). Approved programs for assignment of a DO rating are:

Program Identification Symbol	Approved Program
A1	Aircraft
A2	Missiles
A5	Weapons
A6	Ammunition
A7	Electronics and communications equipment
B9	Production equipment (Government-owned)
C9	Miscellaneous

(2) DX. Items and when applicable, related services in support of programs designated by the Secretary of Defense to be of the Highest National Priority as described in the Department of Defense (DoD) List of DX-Rated Programs are rated as DX-A2 upon establishment of a required delivery date or dates (see (c)). The DoD List of DX-Rated Programs is limited to only a small number of programs approved by the Department of Defense, and the Contractor shall not use a DX-A2 priority rating on any subcontracts other than those in support of a program identified in the DoD List of DX-Rated Programs. At the Contractor's request, NNSA can provide a current DoD List of DX-Rated Programs to the Contractor.

(c) Required Delivery Dates. If not expressly identified in this contract, the required delivery date for DPAS-rated items and related services is as specified in writing by the cognizant NNSA Program Office or Field Office.

(d) Placing DPAS Ratings on Subcontracts.

(1) Subcontracts that May be Assigned DPAS Ratings. When placing subcontracts that directly support a DPAS-rated portion of this contract, the Contractor may, if necessary, place DPAS-rated subcontract orders for:

(i) Items (as defined in 15 CFR § 700.8) which will be physically incorporated into other items to fill a rated portion of this contract, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(ii) Containers or other packaging materials required to make delivery of the finished items required under a rated portion of this contract;

(iii) Services, other than contracts of employment, needed to fill a rated portion of this contract;

(iv) Maintenance and repair and/or operating supplies (as defined in 15 CFR § 700.8) needed to produce the finished items to fill rated orders.

(v) Subcontracts that Shall Not be Assigned DPAS Ratings. Notwithstanding (d)(1), subcontracts shall not be assigned DPAS ratings to obtain:

(vi) Any items that (i) are commonly available in commercial markets for general consumption; (ii) do not require major Modification when purchased for approved program use; and (iii) are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements;

(vii) Any items to be used primarily for administrative purposes, such as for personnel or financial management;

(viii) Delivery of items or services on a date earlier than needed;

(ix) A greater quantity of the item than needed, except to obtain a minimum procurable quantity;

(x) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense; or

(xi) Copper raw materials, crushed stone, gravel, sand, scrap, slag, central steam heat or waste paper;

(xii) Any items subject to the authorities granted exclusively to other agencies by Executive Order 13603 (*e.g.*, health resources, civil transportation, etc.).

(2) Subcontract Terms. The Contractor shall ensure that any rated subcontracts are appropriately rated and contain terms substantially the same as (a) and (d) of this clause.

(3) Contractor's Responsibility. It is the Contractor's responsibility to ensure that it complies with DPAS regulations, this clause, and other pertinent authorities. Though the Government may review certain Contractor subcontract solicitation and award documents (in accordance with other provisions of this Contract), that review shall not be construed as consent that the Contractor's choice to rate a subcontract is appropriate. If the Contractor has specific questions regarding the rating on this Contract or its applicability to

subcontracts, the Contractor has an affirmative duty to seek clarification from the appropriate contracting officer.

(e) Records and Reporting Requirements.

(1) Record Retention. Notwithstanding any other provision of this contract, the Contractor shall maintain and preserve for at least three years, accurate and complete records related to any DPAS-rated subcontract.

(2) Reporting. On a semi-annual basis (January 15 and July 15 of each year), the Contractor shall provide to the Contracting Officer a summary of all DPAS-rated subcontract orders placed in the preceding six, calendar months by the Contractor. This information shall be contained in a sortable Microsoft® Excel spreadsheet with the following information (contained in separate columns):

(i) Date the rated subcontract order was placed;
(ii) Subcontract order identification number;
(iii) Description of items or services acquired;
(iv) Rating and Approved Program Identifier assigned to the subcontract (*e.g.*, DO-A2); and
(v) A detailed justification for the rating assigned.

(f) SPP. The priority ratings assigned to the Contract are not authorized for use in support of SPP. Use of DPAS priority ratings for SPP is governed by the priority rating, if any, assigned by the Non-DOE/non-NNSA entity requesting the work. The Contractor is responsible for complying with instructions provided by the non-DOE/non-NNSA entity regarding the applicability of DPAS to SPP.

H-50 MITIGATING SUPPLY CHAIN RISK (Mod 854)

DOE/NNSA utilizes a Supply Chain Risk Management (SCRM) Program to identify, assess, and monitor supply chain risks of critical vendors. The Government may use any information, public and non-public, including all-source intelligence for its analysis. The Contractor agrees that the Government may, at its own discretion, perform audits of supply chain risk processes or events consistent with other terms in the contract regarding access to records and audits. An onsite assessment may be required. Through the information obtained from a SCRM program, DOE may assess vendors and products through multiple risk lenses such as national security, cybersecurity, compliance, and finance. If supply chain risks are identified and corrective action becomes necessary, mutually agreeable corrective actions will be sought based upon specific identified risks. Failure to resolve any identified risk may result in contract termination.

H-51 MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR INFORMATION AND COMMUNICATION TECHNOLOGY (Mod 854)

(a) *Definitions*. As used in this clause–

(1) Covered article - The term "covered article" includes-

i) “Information technology” which means –

(1) any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use-.

(a) of that equipment, or

(b) of that equipment to a significant extent in the performance of a service or the furnishing of a product

(2) computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; however,

(3) does not include any equipment acquired by a federal contractor incidental to a federal contract.

(i) “Telecommunications Equipment”, which means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)

(ii) “Telecommunications Service”, which means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(iii) the processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program; or

(iv) hardware, systems, devices, software, or services that include embedded or incidental information technology.

(2) Supply Chain Risk- The term “Supply Chain Risk” means the risk that a person may sabotage, maliciously introduce unwanted function, extract data, or otherwise

manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.

(b) The Contractor shall take all prudent actions, and comply with all Government directions (as identified in (c)), to mitigate supply chain risk when providing covered articles or services affecting covered articles to the Government.

(c) In order to manage supply chain risk, the Government may use the authority provided by 41 U.S.C. 4713 to, among other things, withhold consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

H-52 MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR NATIONAL SECURITY SYSTEMS, NUCLEAR WEAPONS COMPONENTS AND ASSOCIATED ITEM (Mod 854)

(a) Definitions. As used in this clause–

(1) "Covered system" means-
  (a) National security systems (as defined at 44 U.S. Code § 3552) and components of such systems;
  (b) Nuclear weapons and components of nuclear weapons;
  (c) Items associated with the design, development, production, and maintenance of nuclear weapons or components of nuclear weapons;
  (d) Items associated with the surveillance of the nuclear weapon stockpile; or
  (e) Items associated with the design and development of nonproliferation and counterproliferation programs and systems.

(2) "Covered item of supply" means an item—
  (a) that is purchased for inclusion in a covered system; and
  (b) the loss of integrity of which could result in a supply chain risk for a covered system.

(3) "Supply Chain Risk" means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system or covered item of supply so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of the system or item of supply.

(b) The Contractor shall take all prudent actions, and comply with all Government directions

(as identified in (c)), to mitigate supply chain risk when providing covered systems or covered items of supply to the Government, and services affecting covered systems or covered items of supply.

(c) In order to manage supply chain risk, the Government may use the authority provided by 50 U.S.C. 2786, to, among other things, withhold of consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract When the Government exercises this authority, it will only provide the Contractor with information pertaining to the basis of the action to the extent necessary to carry out the action. No action taken by the Government pursuant to 50 U.S.C. § 2786 shall be subject to review in any Federal court.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

H-53 CONFIDENTIALITY OF INFORMATION (MOD 877)

(a) Third Party Information Provided by Government to Contractor: To the extent that the work under this Contract requires that the Contractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data belonging to other entities that is confidential or proprietary ("Third Party Information"), the Contractor shall, after receipt thereof, treat such information in confidence and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized in writing by the Contracting Officer. Unless covered by other existing confidentiality requirements, the foregoing obligations shall not apply to:

(1) Information or data that is in the public domain at the time of receipt by the Contractor.

(2) Information or data that is published or otherwise subsequently becomes part of the public domain through no fault of the Contractor;

(3) Information or data in possession of the Contractor prior to receipt, either directly or indirectly, from the Government; and

(4) Confidential or proprietary information or data owned by a third party that has expressly authorized unlimited distribution.

(b) Third Party Information Provided by third Party: The Contractor agrees to enter into contractual arrangements with the owners of such Third Party Information pursuant to its standard business practices and procedures, using template documents, when appropriate, to reflect terms and conditions which are deemed standard or appropriate under commercial industry standards and consistent with Agency preferences, or the template documents provided by the owners of the Third Party Information, as

appropriate for each transaction. Upon written request of the Contracting Officer, the Contractor shall furnish the Government with copies of its template documents, or individual contracts for oversight purposes. On an annual basis, the contractor shall submit to the Contracting Officer a report that identifies all of the entities who supplied the Contractor with such information, with such summary information available, and / or other data as requested by the Contracting Officer. No classified information or Third Party Information shall be included in the report.

(c) Consistent with its obligations under this contract and industry standards for California-based employees, the Contractor shall obtain the written agreement of each employee permitted access to Third Party Information whereby the employee agrees that such Third Party Information for which the Contractor is obligated to treat in confidence will not be discussed, divulged or disclosed except as otherwise permitted in contractual agreements with the owners of such Third Party Information.

(d) Upon request of the Government, the Contractor shall execute a DOE/NNSA approved agreement with any party whose facility or proprietary data the Contractor is given access to or is furnished by the Government pursuant to clause (a) above, restricting use and disclosure of the data or the information obtained from the facilities.

(e) Contract Language substantially similar to this clause, including this paragraph (d) shall be included in subcontracts if there is a requirement or there becomes a requirement that the subcontractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data.

H-54 INSTRUCTIONS FOR UPDATING FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) INFORMATION (MOD 877)

(a) In order to submit periodic updates or to report changes to Foreign Ownership, Control or Influence information as required by DEAR 952.204-2, Security, the Contractor shall use the DOE FOCI electronic submission system located at https://foci.anl.gov.

(b) New users, when registering to update information under this Contract, should select "NNSA Albuquerque Complex - Office of Partnership and Acquisition Services (NAPAS)" as the FOCI Office that will review the FOCI Submission.

(c) All FOCI documentation/forms shall be completed within the eFOCI system. NOTE: A completed SF 328, Certificate Pertaining to Foreign Interests, executed in accordance with the instructions on the certification section of the SF328, shall be printed, signed and uploaded into the eFOCI system. The SF 328 is required for first time submissions, any time there are changes to the SF 328, and at the request of the Cognizant Security Authority (CSA). Specific problems maneuvering through the fields within the eFOCI system can be clarified by contacting the eFOCI help desk at (630) 252-6566 or fociserver@anl.gov.

H-55 KEY PERSONNEL (MOD 877)

(a) KEY PERSONNEL EMPLOYER. Key Personnel shall be employees of the Contractor and shall not be on assignment (i.e., seconded) from another organization.

(b) NOMINATION AND SELECTION OF KEY PERSONNEL. The nomination and selection of an individual to fill any Key Personnel position shall follow a consistent approach and approval of the LLC and Laboratory Director must be obtained before a Key Person is proposed to the Contracting Officer, except that approval of the Laboratory Director is not required for the Laboratory Director position.

(c) KEY PERSONNEL REPORTING STRUCTURE. The Laboratory Director shall report to the Contractor's Board of Governors. Key Personnel shall report through the Laboratory Director.

(d) REPLACEMENT OF KEY PERSONNEL UNDER SERVICE AGREEMENT. To ensure consistency with Appendix A, Section III Compensation, unless approved in advance, in writing, by the Contracting Officer, should any Key Personnel be removed, replaced, or diverted by the Contractor, before the Key Person has served in the Key Position for two years, for reasons other than to maintain satisfactory standards of employee competency, conduct and integrity in accordance with the Contract's Section I clause entitled "DEAR 970.5203-3, Contractor's Organization (DEC 2000) (Class Deviation), paragraph (c)"), the Contractor shall forfeit two years of the DOE/NNSA reimbursable annual salary and relocation or similar costs as well as associated burdens. Such forfeited costs shall be considered unallowable costs under this Contract and shall be considered a debt due to the Government within 30 days of the effective date any Key Personnel is removed, replaced, or diverted from the key position.

(e) REPLACEMENT OF KEY PERSONNEL DURING CONTRACT PERFORMANCE. In addition to the requirements outlined in Section I DEAR Clause 952.215-70, the Contractor shall submit the proposed compensation for the proposed Key Person following requirements in Section B, Clause H-35 Workforce Transition, Contractor Compensation, Benefits, and Pension (d) Salary and Benefits (2) (III).

(f) ADDITION OF NEW KEY PERSONNEL POSITIONS DURING CONTRACT PERFORMANCE. During Contract performance the Contractor may, if approved by the Contracting Officer, add new Key Personnel positions if necessary to achieve mission objectives. At least 60 days before the proposed effective date of the action, the Contractor shall submit a request to the Contacting Officer with an accompanying justification that includes: a description of the proposed Key Personnel position (including the role, responsibilities and lines of authority), the Contractor's rationale for the new Key Personnel position, and the benefits the Government will achieve through approval of the new Key Personnel position. If the request for the new Key Personnel position is approved, the Contractor shall submit the compensation for the new Key Person in accordance with Section B, Clause H-35 Workforce Transition, Contractor

Compensation, Benefits, and Pension (d) Salary and Benefits (2) (III).

(g) LIMITS ON REIMBURSEMENT OF KEY PERSONNEL COMPENSATION. The reimbursed salary of the Contractor's top official will serve as the maximum allowable salary reimbursement level. Notwithstanding any other term or condition set forth in the Contract, the compensation reimbursed by the Government for each of the Contractor's Key Personnel shall not exceed the Office of Federal Procurement Policy (OFPP) Executive Compensation cap per fiscal year, adjusted annually based on the Employment Cost Index (ECI), as determined by Section 702(a)(1) of the Bipartisan Budget Act of 2013, P.L. 113-6 (December 26, 2013), codified at 41 U.S.C. § 4304(a)(16). Any Key Personnel bonuses and associated burdens are considered unallowable costs.

H-56 CONTRACTOR PERFORMANCE EVALUATIONS (MOD 877)

In accordance with Federal Acquisition Regulation (FAR) Subpart 42.15, the NNSA will prepare and submit past performance evaluations to the Past Performance Information Retrieval System (PPIRS). Evaluation reports will be documented not later than 120 days after the end of an evaluation period by using the Contractor Performance Assessment Reporting System (CPARS) which has connectivity with PPIRS. Contractor must register in CPARS in order to view/comment on their performance reports.

H-57 STRATEGIC PURCHASING (MOD 877)

(a) The Contractor shall participate with NNSA and other NNSA contractors as part of an "enterprise organization" taking advantage of the many benefits that can be achieved through strategic purchasing. Strategic purchasing can result in better pricing, better products, more timely delivery, reduced administrative costs and lead times for both the Contractor and the NNSA, greater standardization and interchangeability across the NNSA complex, and increased award to small business entities.

(b) The Contractor shall cooperate with NNSA and other NNSA contractors in identifying requirements under this Contract that are suitable for strategic purchasing and shall facilitate the identification of work to be directly acquired by NNSA to support the objectives discussed below. The Contractor shall use the contracting vehicles identified by the NNSA as strategic purchases and any strategic sourcing vehicle available to NNSA and DOE contractors to meet all suitable requirements under this Contract unless the cost of using such contracting vehicles is shown to be excessive, does not provide the best value and or impacts the Contractor's schedule. The Contractor may propose alternative acquisition strategies to the Contracting Officer.

H-58 PARTNERING AND CONTRACT MAINTENANCE (MOD 877)

As requested from time to time by the Contracting Officer, and at a frequency no less than once every five years, the Contractor and the NNSA shall review the Contract requirements together for the purpose of identifying areas of the Contract (e.g. clauses, directives, etc.) that may be improved. Improvements include additions, revisions, or deletions of Contract

language or requirements documents that create efficiencies and/or streamline processes. This partnering process of reviewing the Contract is not intended to take the place of the Contractor's responsibilities under H-23 Standards Management. Any Modifications to the Contract resulting from this process will be by mutual agreement of the Parties. This clause in no way impairs the NNSA's ability to Modify the Contract unilaterally pursuant to other clauses in the Contract.

H-59 IMPLEMENTATION OF THE FRAMEWORK FOR NUCLEIC ACID SYNTHESIS SCREENING (MOD 885)

(a) Definitions.

Customer – as defined in the Framework for Nucleic Acid Synthesis Screening, is the individual or entity (such as an institution) that orders or requests synthetic nucleic acids from a Provider, or that purchases nucleic acid synthesis equipment from a Manufacturer. For the purposes of this clause, the Department of Energy's contractors and subcontractors are considered customers.

Provider — as defined in the Framework for Nucleic Acid Synthesis Screening, is an entity that synthesizes and distributes synthetic nucleic acids. Providers may provide nucleic acids to a customer or third-party vendor. A Provider is understood to be synthesizing and distributing nucleic acids as a transactional service, rather than as a research scientist collaborating with a colleague.

Manufacturer — as defined in the Framework for Nucleic Acid Synthesis Screening, is an entity that produces and distributes benchtop equipment for synthesizing nucleic acids. Manufacturers may provide equipment to a customer or third-party vendor.

(b) Requirements.

(1) The Contractor shall obtain synthetic nucleic acids – or devices capable of synthesizing them – from Providers or Manufacturers that attest to implementing 2024 Office of Science and Technology Policy (OSTP) Framework for Nucleic Acid Synthesis Screening.

(2) The attestation may be provided through a publicly posted statement (e.g., public website) or directly to the Contracting Officer (or contractor/subcontractor for subcontracts) by the Provider or Manufacturer.

(3) Flowdown of requirements to subcontractors. The Contractor shall incorporate the substance of this clause, its terms and requirements, including this paragraph, in all subcontracts in support of the contract that may involve the procurement of synthetic nucleic acids and benchtop nucleic acid synthesis equipment.

(End of Clause)

H-60 SAFEGUARDING COVERED NNSA INFORMATION, CLOUD COMPUTING SERVICES, AND CYBERSECURITY INCIDENT REPORTING (Mod 908)

(a) *Definitions*. As used in this clause—

"Authorizing official," as defined by the National Institute of Standards and Technology (NIST) (https://csrc.nist.gov/glossary/term/authorizing_official), means the senior Federal official or executive with the authority to formally assume responsibility for operating an information system at an acceptable level of risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation.

"Cloud computing," as used in this provision, means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

"Compromise" means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

"Contractor/corporate-owned records" means records not identified as Federal records (such as company proprietary information, records unrelated to the work performed under a federal contract, and other similar records) that belong to the contractor. Contractor/corporate-owned records are defined in the contract and/or through the Access to an Ownership of Records clause (48 CFR 970.5204.3). Privacy Act Systems of Record [Federal Acquisition Regulation (FAR) 52-224-2] are NOT contractor-owned records.

"Covered contractor information system" means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered NNSA Information.

"Covered NNSA Information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at https://www.archives.gov/cui/registry/category-list.html, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, Department of Energy Order 471.7, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of NNSA in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

"Cybersecurity incident" means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

"Forensic analysis" means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

"Government data" means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

"Government-related data" means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding or algorithms that are not uniquely applied to the Government data.

"Information technology" has the meaning assigned in section 11101 of title 40, including cloud computing services of all types.

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

"Malicious software" means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

"Media" means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered NNSA Information is recorded, stored, or printed within a covered contractor information system.

"Spillage" security incident that results in the transfer of classified or controlled unclassified information onto an information system not accredited (i.e., authorized) for the appropriate security level.

(b) The Contractor shall provide security on all covered contractor information systems. To provide security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements delineated in paragraphs (m) through (v).

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the Contractor shall ensure that all covered contractor information systems comply with the security requirements identified in National

Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement the security requirements identified in NIST SP 800-171, as soon as practicable, but not later than twelve months after award; all software updates and patches shall be installed as soon as practicable or as applicable based on dependent application updates.

(B) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered NNSA Information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) (https://www.fedramp.gov/cloud-service-providers/), and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cybersecurity incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cybersecurity incident damage assessment.

(3) Apply other information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, when the Contractor determines these measures are required to provide security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures shall be addressed in a system security plan..

(c) *Cybersecurity incident reporting requirement.*

(1) When the Contractor discovers a cybersecurity incident that affects a covered contractor information system and/or the covered NNSA Information residing therein; or affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered NNSA Information, including but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered Contractor information system(s) that were part of the Cybersecurity incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered NNSA Information, or the Contractor's ability to provide operationally critical support; and

(ii) Report Cybersecurity incidents to the NNSA Information Assurance Response Center (IARC) in accordance with the IARC Cybersecurity Incident Reporting Standard Operating Procedure (IARC-SOP-24601) which can be requested from the IARC at iarc@nnsa.doe.gov.

(2) *Cybersecurity incident report*. The cybersecurity incident report shall be treated as covered NNSA information created by or for the IARC.

(d) *Malicious software*. When the Contractor discovers and isolates malicious software in connection with a reported cybersecurity incident, the Contractor shall submit the malicious software to the IARC in accordance with instructions provided by IARC or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) *Media preservation and protection*. When a Contractor discovers a cybersecurity incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least one year from the submission of the cybersecurity incident report to allow NNSA to request the media.

(f) *Access to additional information or equipment necessary for forensic analysis*. Upon request by NNSA, the Contractor shall provide NNSA with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cybersecurity incident damage assessment activities*. If NNSA elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *NNSA safeguarding and use of contractor/corporate-owned records*. The Government shall protect against the unauthorized use or release of information obtained from the Contractor (or derived from information obtained from the contractor) under this clause that includes contractor/corporate-owned records including such information submitted in accordance with paragraph (c), unless otherwise required by law. To the maximum extent practicable, the Contractor shall identify and mark contractor/corporate-owned records. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor/corporate-owned records that are included in such authorized release, seeking to include only the information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of Contractor/corporate-owned records not created by or for NNSA.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is not created by or for NNSA is authorized to be released outside of NNSA—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cybersecurity incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cybersecurity situational awareness; or

(5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract in accordance with paragraph (w), *Limitations on the Use or Disclosure of Third-Party Contractor Reported Cybersecurity Incident Information*.

(j) *Use and release of Contractor attributional/proprietary information created by or for NNSA.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is created by or for NNSA (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of NNSA for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements*. The safeguarding and cybersecurity incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cybersecurity incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Cloud computing security requirements*. The requirements of this paragraph (m) through (v) are applicable when using cloud computing to provide information technology services in the performance of the contract.

(1) The Contractor shall implement and maintain administrative, technical, and physical safeguards and controls in accordance with the latest versions of DOE Order 205.1 and NNSA SD 205.1, unless notified by the Contracting Officer that this requirement has been waived by the NNSA Chief Information Officer.

(2) The Contractor shall maintain all Government data that is not physically located on NNSA premises within the United States or outlying areas (as defined by 48 C.F.R. § 2.101), unless the Contractor receives written notification from the Contracting Officer to use another location.

(n) *Limitations on access to, and use and disclosure of Government data and Government-related data.*

(1) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued hereunder.

(i) If authorized by the terms of this contract or a task order or delivery order issued hereunder, any access to, or use or disclosure of, Government data shall only be for purposes specified in this contract or task order or delivery order.

(ii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iii) These access, use, and disclosure prohibitions and obligations shall survive the expiration or termination of this contract.

(2) The Contractor shall use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(o) *Cloud computing services Cybersecurity incident reporting*. The Contractor shall report all Cybersecurity incidents that are related to the cloud computing service provided under this contract to the NNSA IARC in accordance with IARC Cybersecurity Incident Reporting Standard Operating Procedure (IARC-SOP-24601), which is available through contact with the IARC at iarc@nnsa.doe.gov.

(p) *Malicious software within the cloud computing environment*. The Contractor that discovers and isolates malicious software in connection with a reported Cybersecurity incident shall submit the malicious software to the IARC in accordance with instructions provided by IARC or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(q) *Media preservation and protection within the cloud computing environment*. When a Contractor discovers a Cybersecurity incident has occurred within the cloud computing environment, the Contractor shall preserve and protect images of all known affected information systems identified in the IARC Incident Reporting Form (see paragraph (o) of this clause) and all relevant monitoring/packet capture data for at least one year from the submission of the IARC Incident Reporting Form to allow NNSA to request the media.

(r) *Access to additional information or equipment necessary for forensic analysis*. Upon request by NNSA, the Contractor shall provide NNSA with access to additional information or equipment that is necessary to conduct a forensic analysis.

(s) *Cybersecurity incident damage assessment activities*. If NNSA elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (q) of this clause.

(t) *Records management and facility access.*

(1) The Contractor shall provide the Contracting Officer all Government data and Government-related data in the format specified in the contract.

(2) The Contractor shall dispose of Government data and Government-related data in accordance with the terms of the contract and provide the confirmation of disposition to the Contracting Officer in accordance with contract closeout procedures.

(3) The Contractor shall provide the Government, or its authorized representatives, access to all Government data and Government-related data, access to Contractor personnel involved in performance of the contract, and physical access to any Contractor facility with Government data, for the purpose of audits, investigations, inspections, or other similar activities, as authorized by law or regulation.

(u*) Notification of third-party access requests*. The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency.

The Contractor shall cooperate with the Contracting Officer to take all measures to protect Government data and Government-related data from any unauthorized disclosure.

(v) *Spillage*. Upon notification by the Government of a spillage, or upon the Contractor's discovery of a spillage, the Contractor shall cooperate with the Contracting Officer to address the spillage in compliance with the IARC Cybersecurity Incident Reporting Standard Operating Procedure (IARC-SOP-24601), which is available through contact with the IARC at iarc@nnsa.doe.gov.

(w) *Limitations and restrictions on the use or disclosure of third-party contractor reported cybersecurity information*. The Contractor agrees that the following conditions apply to any information it

receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a Cybersecurity incident pursuant to paragraphs (c) through (l):

(1) The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to paragraphs (c) through (l) and shall not be used for any other purpose.

(2) The Contractor shall protect the information against unauthorized release or disclosure.

(3) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

(4) Information provided by a third-party contractor reporting a Cybersecurity incident shall be subject to equivalent protection for use and non-disclosure obligations as those referred to in paragraph (w)(3) of this clause (with the exception that all information must be both useable and disclosable to the Government).

(5) A breach of these obligations or restrictions may subject the Contractor to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States.

(x) *Subcontracts*. The Contractor shall—

(1) Include this clause, including paragraph (x), in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered NNSA information, cloud services, and Cybersecurity incident reporting, including subcontracts for commercial products or commercial services, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered NNSA Information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to provide incident report information to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cybersecurity incident to NNSA as required in paragraph (c) of this clause.

H-61 GENESIS MISSION GUIDANCE AND RELATED DOCUMENTS (Mod 936)

This clause incorporates the Genesis Mission Direction, Guidance and Related documents located at PART III Section J – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS, Appendix Q.

H-9999 WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (Mod M081)

Work performed under this Contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act). The Recovery Act's purposes are to stimulate the economy and to create and

retain jobs. The Recovery Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

To comply with the reporting requirements of Section 1512(c) of the Recovery Act and related Guidance, the Contractor shall segregate all costs associated with Recovery Act actions assigned and authorized under this Contract from those costs associated with all other work authorized under the terms of this Contract.

The Recovery Act funds can be used in conjunction with other funding as necessary to complete projects. However, the Contractor must ensure that the project contains the authorized Treasury Accounting Symbol (TAS) approved by the Contracting Officer to ensure linkage between procurement and financial data. The Contractor should issue separate contracts (if subcontracted) for the Recovery Act project tasks to ensure compliance with the tracking and reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, the Contractor should record the TAS and project number and assign separate tasks codes to ensure that the financial information in not co-mingled and to ensure the records allows a clear and auditable linkage between the projects, procurement and financial data, as prescribed in the Recovery Act.

The Government will develop the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor shall comply with all applicable requirements of the Recovery Act including those Recovery Act requirements contained in a Work Authorization. If the Contractor believes there is any inconsistency between the Recovery Act requirements contained in the Work Authorization and the Contract terms and conditions, the Contractor shall seek guidance from the Contracting Officer. The Contractor shall also advise the Contracting Officer if

there are any Contract deliverables or Contract requirements that may need to be updated in order to comply with the Recovery Act.