PART I SECTION H

SPECIAL CONTRACT REQUIREMENTS

Part I Section H
Special Contract Requirements

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Part I Section H

Special Contract Requirements

H.1 Definitions

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

H.2 Defining the Federal/Contractor Relationship

The Government is committed to improving the effectiveness and efficiency of the INL missions. This clause sets forth the Government's intent to achieve that commitment. Additional clauses in this section set forth specific contract requirements and authorities to permit the Contractor to exercise flexibility in managing INL operations.

The Government shall provide program and performance direction regarding what is expected in each program area. The Contractor shall determine how the program requirements are to be executed and shall be accountable for performance in accordance with the terms and conditions of this contract. The Contractor shall use the flexibilities granted under this contract to exercise its expertise and ingenuity in determining the optimal approach to accomplish assigned work in the most effective and efficient manner. As detailed in Section G, the Government shall issue program and performance direction only through a warranted Contracting Officer or a designated Contracting Officer's Representative (COR). All other Federal staff and oversight components are specifically precluded from tasking contractor personnel.

H.3 Reserved

H.4 Contractor Assurance System

(a) The Contractor shall develop a Contractor Assurance System that is approved and monitored by the Contractor's Board of Directors or similar body established to provide oversight of the business entity created pursuant to Section H.40 entitled, "Business Unit." This Contractor Assurance System, at a minimum, shall have the following key attributes:

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

(2) A method for validating processes. Third party audits, peer reviews, independent assessments and external certification (such as VPP and ISO 9001 or ISO 14001) may be used in validating the Contractor's assurance system.

(3) A process for notifying the Contracting Officer of significant assurance system changes.

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

(5) Identification and correction of negative performance/compliance trends before they become significant issues.

(6) Integration of the assurance system with other management systems including Integrated Safety Management.

(7) A process for defining metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.

(8) Continuous feedback and performance improvement.

(9) An implementation plan for the Contractor Assurance System.

(10) A process for timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

(b) The Government may revise its level of oversight of this contract only when the Contracting Officer determines that the Contractor Assurance System is operating effectively.

H.5 Application of DOE Directives and Alternatives

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

(b) **Laws and Regulations Excepted** This clause supplements the requirements in Section I entitled, “Laws, Regulations, And DOE Directives,” (DEAR 970.5204-2) and DOE M 251.1-1A for purposes of addressing alternatives to DOE directives. The process described in this clause does not affect the application of applicable laws and regulations.

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

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

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

(1) Deny application of the proposed alternative;

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

(3) Approve the proposed alternative; or

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

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

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

Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the directive or modification to Section J, Attachment G. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the directive or modification.

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

H.6 Lobbying Restriction (Energy and Water Act 2004)

The Contractor agrees that none of the funds obligated on this contract 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.7 Lobbying Restriction (Interior Act 2004)

The Contractor agrees that none of the funds obligated on this contract shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.8 Technology Transfer Licensing Program

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

The Contractor shall utilize the Laboratory share of royalty revenues and other fees obtained pursuant to activities under this clause at the Laboratory consistent with paragraph (h) of the Section I clause entitled, "Technology Transfer

Mission." The Contractor agrees to carry out licensing activities in accordance with the export control laws and regulations of the United States.

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

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

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

(1) Identify the inventor to the Contracting Officer.

(2) Provide an accounting of time spent by the inventor on private consultations, Work for Others projects and DOE mission work.

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

H.9 Third Party Rights

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

H.10 Option to Take Title to Facilities

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

H.11 Public Communications

(a) The Contractor shall develop a communications strategy in accordance with Section I clause entitled, "Public Affairs" (DEAR 952.204-75) that supports two goals:

(1) Communicating with stakeholders how the INL's work supports the government's missions in energy, national security, science and the environment; and

(2) Building informed consent that will allow the INL to move forward with new, but potentially controversial projects that contribute to these missions. This responsibility shall be carried out in such a manner that the public has a clear understanding of activities at the INL.

(b) The INL Contractor shall coordinate as needed with the ICP Contractor communications program to ensure consistent information is presented to the public.

H.12 Privacy Act Systems of Records (SOR)

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

DOE System Number	Title
DOE-05	Personnel Records of Former Contractor Employees (This SOR shall include the records of all former employees who previously worked for any predecessor contractors at the INEEL)
DOE-10	Worker Advocacy Records
DOE-11	Emergency Operations Notifications Call List
DOE-15	Intelligence Related Access Authorization
DOE-31	Firearms Qualification Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-48	Security Education and/or Infraction Reports
DOE-51	Employee and Visitor Access Control Records

DOE-52	Access Control Records of International Visits, Assignments and Employment
DOE-75	Call Detail Records
DOE-77	Physical Fitness Test Records
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records
DOE-88	Epidemiologic and Other Health Studies, Surveys and Surveillances

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

H.13 Stop Work and Shutdown Authority

Section F clause entitled, "Stop Work Order" Alternate 1 (FAR 52.242-15), allows only the Contracting Officer to stop work or shutdown facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

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

H.14 Work Force Transition and Human Resources Management

(a) **Employee Management Program** The Government intends that the Contractor has the flexibility to organize its work force as it believes necessary to effectively and efficiently perform the scope of work covered in this contract. The Government shall, consistent with budget realities, support the Contractor's long-term efforts to establish and administer wage and employee benefit programs that attract and motivate the highly skilled work force needed to accomplish the work. During transition, the Contractor shall establish the management structures necessary to conduct employee relations and develop a comprehensive plan describing the Contractor's Employee Management Program. This plan must demonstrate how the Contractor will -

(1) Ensure realignment of INL resources while ensuring an orderly transition from Bechtel BWXT Idaho, LLC (BBWI) and the University of Chicago (collectively referred to as the "incumbent contractors");

(2) Be fair to employees while maintaining a productive and flexible work force;

(3) Promote the stability of collective bargaining relationships;

(4) Minimize the cost of transition and its impact on DOE programs; and

(5) Assure access to a sufficient work force with the skills necessary to meet contract requirements and specifically addressing --

(i) The Contractor's approach for assessing the skills of incumbent contractor employees and filling vacancies with employees who were on the payroll of incumbent contractors.

(ii) The Contractor's approach for establishing appropriate incentives that encourage highly skilled, motivated, and experienced workers to accept an employment offer and motivates these workers to remain at the INL on a long-term basis.

This plan shall be incorporated into the contract in Section J, Attachment L entitled, "Employee Management Plan."

(b) **Employee Transition**

Collectively, the INL Contractor (except as set forth in (2)(i) below) and the ICP Contractor are required to offer employment to all existing employees in good standing on the regular payroll of the incumbent contractors at the time of contract takeover. For the INL Contractor, this is estimated to be 3055 employees (includes approximately 610 ANL-W incumbent employees and approximately 2445 BBWI incumbent employees). For purposes of the remainder of this section entitled "Employee Transition", non-management employees means employees below the first level supervisor, and management employees means employees at the first level supervisor and above.

(1) **Non-Management Employees**. Except where required by collective bargaining agreements, it is not mandatory that hired employees remain in their current job positions or classifications. Any changes in job positions or classifications shall be accompanied by alteration in compensation commensurate with any change in position and consistent with section (c)(1) "Pay and Benefits", of this clause.

(2) **Management Employees.** It is the Contractor's prerogative to establish its own management structure and team.

(i) Continued employment of management employees in the positions listed in Section J, Attachment Q entitled, "Discretionary Incumbent Management Positions" is at the discretion of the Contractor.

(ii) It is not mandatory that hired management employees remain in their current job positions or classifications. Any changes in job positions or classifications shall be accompanied by alteration in compensation commensurate with any change in position and consistent with section (c) (1) 'Pay and Benefits', of this clause.

(3) These employee transition provisions do not apply to subcontractor employees.

(c) **Pay and Benefits**

(1) **Base Salary/Pay Rates** For employees of incumbent contractors hired by the Contractor under subparagraph (b) above -

(i) The Contractor shall pay them for the first year of employment, base salary/pay rates that are at least equivalent to the base salary/pay rates they are being paid at the time the Contractor offers them employment if the position for which they are hired entails duties and responsibilities substantially equivalent to their last positions with the incumbent contractors. For represented employees, pay rates will be determined through the collective bargaining process.

(ii) If the base salary/pay rates that employees were paid in their last position with the incumbent contractors fall above the maximum rate of the new base salary/pay rates, in such circumstances, they shall continue to receive for the first year of employment the salary/pay rate paid by the incumbent contractors, and for the first year shall receive no base salary/pay adjustments unless the salary/pay rate structure the Contractor implements increases to exceed their base salary/pay rates. They shall then be eligible for increases consistent with the Contractor's policies. For represented employees, any changes will be determined through the collective bargaining process.

(iii) If the base salary/pay rates these employees were paid in their last position with the incumbent contractors fall below the minimum

rate of the new base salary/pay rates in such circumstances, they shall have their salaries/pay rate increased to reflect the new rates.

(2) **Service Credit Dates:** Employees who change employment to BEA from BBWI or CWI, will receive credit for their prior service, as recognized by the losing employer, for purposes of determining leave balances, severance payments and service awards.

(3) **Pensions and Other Employee Benefits**

(i) The Contractor shall sponsor and manage pension and other employee benefit plans in accordance with law. The Contractor shall have responsibility for funding, and collecting funding from co-sponsors ,as provided in Section H.14(c)(3)(iv) below, administering, and maintaining the qualified status of all pension and investment plans. The Contractor's efforts in this area include resolution of pension and other employee benefits issues associated with transitioning a work force employed by two incumbent contractors administering separate and distinct benefits plans. The Contractor is encouraged to explore ways to modernize and consolidate pension and other benefits plans. Resolution of these issues must be done in a manner that -

a. Is fair to hired incumbent contractor employees participating in plans maintained by the incumbent contractors;

b. Is cost-effective;

c. Attracts outstanding people to work at the INL; and

d. Provides the best fit for the long-term vision of the INL.

(ii) The Contractor shall, for the benefit of employees hired by the Contractor during transition who were participants in defined contribution plan(s), either -

a. Establish defined contribution pension plan(s) that accept existing employee account assets and obligations from incumbent contractor defined contribution plan(s); or

b. Become a sponsor or co-sponsor of those plan(s).

(iii) The Contractor shall become the main sponsor of existing site defined benefit plan(s) for employees hired by the Contractor during transition who were participants in the plan(s), with responsibility for management and administration of the plan(s).

These plan(s) will be co-sponsored by the ICP Contractor. For a period of five years after contract takeover, the Contractor shall allow such employees to accrue credit under the plan(s) for service under this contract or the ICP contract. The plan(s) shall accept rollovers of the interests of incumbent contractor employee participants who initially become employees of the ICP Contractor and who thereafter become employees of the Contractor without treating their employment with the ICP Contractor as a break in service. In a timely manner prior to the end of this five-year period, the Contractor shall provide a written recommendation for Contracting Officer approval for transitioning the covered employees to new plan(s) established under this contract or continuing the plan(s) until completion of the contract term.

(iv) From February 1, 2005, through September 30, 2007, all costs (including administration) associated with the site Defined Benefit Pension Plan will be split so that the INL share is 42%, the ICP share is 57%, and the AMWTP share is 1%. As of October 1, 2007, all costs (including administration) associated with the site Defined Benefit Pension Plan will be split so that the INL share is 47%, the ICP share is 52%, and the AMWTP share is 1%.

From February 1, 2005, through September 30, 2007, all costs (including administration) associated with the Medical and Welfare Benefits program for retirees as of January 31, 2005, will be split so that the INL share is 42%, and the ICP share is 58%. As of October 1, 2007, all costs (including administration) associated with the Medical and Welfare Benefits program for retirees as of January 31, 2005, will be split so that the INL share is 47%, and the ICP share is 53%.

From February 1, 2005, through January 31, 2007, employee benefits costs included within the amounts reimbursed or funded by the ICP contract for mandatory services (Section J, Attachment F-6.1) count towards ICP's share of the costs.

(v) The Contractor shall maintain and administer pension plan(s) maintained and administered by BBWI for employees who retired from employment with site contractors prior to contract takeover.

(vi) The Contractor shall maintain and administer the post retirement medical benefit plan maintained and administered by BBWI for employees who have retired from employment with site contractors prior to contract takeover.

(vii) Subject to DOE approval, the Contractor shall establish pension and investment plan(s) for new employees hired during the term of this contract. These plans should encourage the voluntary transfer of assets of hired incumbent contractor employees where consistent with legal requirements and with the principles identified above.

(viii) During this contract, the Contractor may change any of the pension and welfare benefit plans, including any of the retirement medical benefits, administered by the incumbent contractors subject to legal requirements and to the requirements and conditions set forth in this contract. The Contractor shall obtain the written approval of the Contracting Officer before it initially implements any pension or welfare benefit plans and before it makes effective any changes in such plans or in any underlying trust documents. Changes to any pension and welfare benefit plans, including any of the retirement medical benefits, shall be consistent with applicable law, terms of the respective plans with respect to the procedures for amending such plans, and the terms of this contract.

(ix) Because the Contractor is responsible for administering and maintaining the qualified status of all pension and investment plans, the Contractor shall, as directed by the Contracting Officer, submit to the Contracting Officer annual actuarial and employer certifications as the sponsoring employer and participating employer in the plans demonstrating full compliance with Internal Revenue Code and Employee Retirement Income Security Act (ERISA) requirements including, but not limited to, any applicable non-discrimination testing.

(4) **Post-Contract Responsibilities for Pension and Benefit Plans**

If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to FAR 52.249-6, "Termination (Cost Reimbursement) (Sept 1996)," the following actions shall occur:

(i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.

(ii) In accordance with DOE-approved Contractor welfare benefit plans, the Contractor shall provide benefit continuation on a funding basis acceptable to DOE.

(iii) During the final 12 months of this contract, the Contracting Officer shall provide written direction regarding post-contract responsibilities for pension and welfare benefit plans.

(iv) Notwithstanding termination for convenience or default, the contract may be extended as appropriate and necessary for purposes deemed necessary by the Contracting Officer, including but not limited to obligating funds to pay the Contractor for costs incurred pursuant to contributions to the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.

(5) **Compensation Paid to Senior Executives**

Allowable costs for compensation paid to senior executives is subject to the limitations published in 65 Federal Register 30640 (May 12, 2000) and any updates published in the Federal Register or in written direction from the Contracting Officer. While this clause establishes the level of compensation that is an allowable cost under this contract, it should not be construed as a limit on the level of compensation the Contractor may pay its senior executives. The Contractor is encouraged to seek out the most highly qualified candidates for senior level executives.

(d) **Labor Relations**

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

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

(3) Consistent with applicable labor law and regulations, the Contractor shall recognize and bargain in good faith with the Paper, Allied-Industrial, Chemical and Energy Workers (PACE) as the collective-bargaining representative of employees performing work that has historically and traditionally has been performed by PACE members and is covered in the scopes of these contracts, and negotiate collective bargaining agreements. During the collective bargaining process, the Contractor shall obtain the

approval of the Contracting Officer before proposing or agreeing to changes in any pension or retirement income plans or to any other welfare benefit plans.

H.15 Severance Pay

(a) Severance pay benefits are not payable to an employee under this contract if the employee:

(1) Voluntarily separates from employment,
(2) Is offered employment with a successor/replacement contractor,
(3) Is offered employment with a parent or affiliated company,
(4) Resigns,
(5) Is discharged for cause, or
(6) Is a key person identified in Section J, Attachment D entitled, "List of Key Personnel."

(b) Service Credit for purposes of determining severance pay does not include any period of prior service at a DOE facility for which severance pay was previously paid.

H.16 Labor Standards

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

H.17 Strikes or Labor Stoppages

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

H.18 Advance Understandings on Labor Costs

(a) During transition, the parties shall negotiate an advance understanding on the costs of wages and other employee benefit programs. This advance understanding shall be incorporated into Section J, Attachment L entitled, "Employee Management Program." Changes to the advance understanding shall receive the written approval of the Contracting Officer.

(b) Examples of costs that shall be addressed in the advance understanding include salaries and wages; bonuses and incentive compensation; fringe benefits; premium pay; overtime; paid time off; travel; subsistence and relocation to the

INL; training; workers compensation and other employee insurance; and other employee benefits (such as employee and retiree medical and short and long-term disability).

(c) Contract deliverables necessary for administration of requirements imposed in the advance understanding shall be described in Section J, Attachment I entitled, "Contract Data Requirements List (CDRL)."

H.19 Displaced Employee Hiring Preference

(a) Consistent with Department of Energy guidance as supplemented by the Idaho Operations Office Workforce Restructuring Plan, the Contractor shall provide to the extent practicable and to the extent the Contractor supplements its existing work force to perform the work, a preference in hiring to any eligible employee for work to be performed under this contract.

(b) Eligible employee means a former or current employee of a contractor or subcontractor (1) who was employed at a Department of Energy Defense Nuclear Facility ("Facility") on or before September 27, 1991, as defined in the interim Planning Guidance for Contractor Work Force Restructuring (DEC 1998) or other applicable Department of Energy guidance for contractor work force restructuring, ("Guidance"), (2) who worked full-time or regular part-time at a Facility from that date through the date of the restructuring notification, (3) whose employment at a Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination other than for cause, (4) who is qualified for a particular position or, with retraining, can become qualified within the time and cost limits set forth in the Guidance.

(c) The Contractor shall assess the skills needed for the work to be performed under this contract and will provide to the DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which it has vacancies.

(d) To the extent practicable, the Contractor shall develop training programs designed to improve the qualifications of eligible employees to fill vacancies and shall take these training programs into account in assessing the qualifications of eligible employees.

(e) This preference is in addition to other hiring preferences described in clause H.14 and in Section I clause entitled, "Displaced Employee Hiring Preference" (DEAR 952.226-74).

(f) The Contractor shall include the requirements of this clause in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

H.20 Subcontract Labor Law Application

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

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

(c) For Subcontracts relating to construction, refer to the clause in Section I entitled, "Government Facility Subcontract Approval."

H.21 Financial Management System

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

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

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

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

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

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

(6) Employs charging practices, policies, and procedures to collect and report forecasted and incurred cost. This proposed work breakdown structure, chart of accounts, charging practices and policies shall be approved by the Government before implementation. Changes to charging practices,

including cost accounting changes or any other change affecting historical records of projects require a modification of the contract.

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

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

(b) These systems shall be compliant with the above standards. These systems include: general electronic data processing, budget & planning, purchasing, material, compensation, labor/payroll, indirect & other direct cost, billing and estimating. The Department of Energy, "Guiding Principles for Financial Management" shall be followed.

H.22 Internal Audit

This clause defines the approach the Contractor shall follow in meeting DEAR 970.5232-3 (h)(3)(i). The Contractor shall conduct an internal audit and examination program in accordance with the DOE Cooperative Audit Strategy as outlined in Department of Energy Acquisition Guide, Chapter 70, Part 5; Government Auditing Standards (yellow book, dated May, 2002) and Internal Auditing Standards (red book, dated January 2002) for records, operations, expenses, and transactions with respect to costs claimed to be allowable and allocable under this contract. The requirements of this clause may be satisfied by the Contractor Assurance System if the referenced standards are included or used in the validation process of that system.

H.23 Project Management System

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

(a) Definition and organization of the work scope

(b) Planning, scheduling and cost estimating

(c) Work authorization

(d) Performance assessment

(e) Change management
(f) Reporting

(g) Closeout

H.24 Unallowability of Certain Costs

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

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

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

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

(c) FAR 31 shall determine the allowability of all other costs not addressed by this or other clauses.

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

H.25 National Environmental Policy Act (NEPA)

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

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

H.26 Withdrawal of Work

(a) The Contracting Officer reserves the right to have any of the work contemplated by Section C of the contract performed by either another contractor or to have the work performed by government employees.

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

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

H.27 Corporate Home Office Expenses

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

H.28 Provisional Payment of Fee/Unearned Fee

a. For the remainder of FY2005, the contractor is authorized to receive a monthly provisional fee payment, not to exceed a total of sixty-five percent (65%) of the $11.1M fee pool established in Section B.2, Table B.1, in accordance with contract clause I.42, entitled "Payments and Advances".

b. Except as allowed in the Section I clause entitled, "Total Available Fee: Base Fee Amount And Performance Fee Amount" (DEAR 970.5215-1), or as may be expressly stated within the text of a specific fee incentive, unearned fee cannot be carried over or used to fund other incentive arrangements of this contract

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

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

H.30 Employee Separations

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

H.31 Reserved

H.32 Allocation of Responsibilities for Contractor Environmental Compliance Activities

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

(a) Purpose and Scope.

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

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

Regardless of which Party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this clause and other clauses related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is the Contractor, the Contractor may seek reimbursement from the Government; and the Government shall determine whether the cost of the fine or penalty is reimbursable pursuant to the provisions of this contract and reimburse the Contractor when appropriate. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor shall either pay the fine or penalty or reimburse the Government (if it pays the fine or penalty).

(c) Signature of Permit Applications and other Regulatory Documents

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

(2) The Contractor shall submit to the Government for review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents shall be provided to the Government, within a time frame identified by the Government, sufficient to allow substantive review and comment; and the Government shall perform such substantive review and comment within such time frame. When providing the Government with documents that are to be signed or co-signed by the Government, the Contractor shall accompany such document with a certification statement, signed by an appropriate company officer, attesting to the Government that the document has been prepared in accordance with all applicable requirements and the information is, to the best of their knowledge and belief, true, accurate, and complete.

(3) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) shall be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.

(d) The Contractor shall maintain clear lines of authority and accountability regarding compliance with environmental requirements. At a minimum, the Contractor shall have a single point of accountability at the site-area level, (e.g., Test Reactor Area, Argonne National Laboratory-West, Central Facilities Area, Idaho Falls Facilities) for all activities at those facilities. The Contractor may further delegate

responsibility for individual buildings, permitted facilities, or similar discrete units provided there is adherence to the principle of single point of accountability.

H.33 Preservation of Antiquities, Wildlife and Land Areas

(a) Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Government. Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of its personnel and subcontractor personnel to ensure that any existing antiquities discovered thereon are not be disturbed or destroyed by such personnel. The Contractor shall report the existence of any antiquities so discovered to the Contracting Officer or appropriate Contracting Officer Representative.

(b) The Contractor shall exercise reasonable care in the preservation of native vegetation. If vegetation must be removed for programmatic, survey or construction purposes, the disturbed soils shall be re-vegetated or stabilized, as appropriate. In addition, the Contractor shall maintain an effective invasive plant species management program.

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

(d) The Contractor shall comply with the requirements of the "Candidate Conservation Agreement for Greater Sage-Grouse (Centroucercus urophasianus) on the Idaho National Laboratory Site" developed cooperatively by the U.S. Department of Energy, Idaho Operations Office and the U.S. Fish and Wildlife Service, September 2014.

H.34 Agreements and Commitments

(a) Resources

(1) The resources proposed by the Contractor and accepted by the Government are incorporated into the contract in Section J, Attachment R entitled, "Agreements and Commitments." The Contractor shall provide these resources in the amount, manner, and schedule as specified in the referenced attachment. If the Contractor fails to provide any or all of these resources or to make progress toward providing these resources, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of the Section I clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts, Alternative II."

(2) The Contractor may propose additional resources for incorporation into the INL at any time during contract performance. Each new resource commitment shall be submitted on a Resource Commitment Form (in Section

J, Attachment R) and approved by an authorized officer attesting to the Contractor's commitment of the resource to work under the contract. Any additional resources accepted by the Government will be incorporated into the contract by modification of the contract.

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

(b) The following are also incorporated into the contract, Section J, Attachment R entitled, "Agreements and Commitments."

(1) The Contractor's proposed organization structure including position title and brief description of each position down to the fifth supervisory level, if applicable. The names of key personnel shall be indicated on the organization structure. This shall remain part of the contract until September 30, 2006. Any changes prior to September 30, 2006, must be approved in advance by the Contracting Officer.

(2) If accepted by the Government, the Contractor's plan for the Center for Advanced Energy Studies in Idaho Falls, Idaho.

H.35 Small Business Subcontracting Plan

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

H.36 Legal Management Plan

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

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

H.37 Responsibility for Existing Contractual and Other Agreements

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

H.38 Business Cooperation

The Government's objective is to better integrate various program activities as they are implemented through major contracts. Accordingly, the Contractor acknowledges the importance of fostering a working environment where scientific, technical, and business innovation and lessons learned are shared among other DOE sites operated by the Contractor or its parents and affiliates, and except where proprietary information is involved, among other sites in the DOE complex. The Contractor further recognizes that the exchange of ideas and systems solutions among scientists, engineers, and administrators at and among the sites and with colleagues of its parents and affiliates, is vital to the success of the scientific, engineering, and administrative work performed. Finally, the Contractor recognizes its role in ensuring that the overall costs of operating DOE site management contracts are minimized by reducing duplication of activities among the DOE sites, sharing resources and applications of business solutions, and resolving common problems in a collaborative manner. Accordingly, the Contractor shall work collaboratively with DOE and other DOE contractors to achieve these objectives.

H.39 DEAR 970.5226-3 -- Community Commitment. (DEC 2000) (Deviation)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include:

(a) Recognizing the diverse interests of the region and its stakeholders (including The Shoshone-Bannock Tribes),

(b) Engaging regional stakeholders in issues and concerns of mutual interest, and

(c) Recognizing that giving back to the community is a worthwhile business practice.

Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

H.40 Business Unit

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

H.41 Performance Guarantee

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

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

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

H.43 Responsible Corporate Official

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

Ronald D. Townsend
Executive Vice President of Global Laboratory Operations
Battelle Memorial Institute
505 King Avenue, Columbus OH 43201
Tel: 614-424-5200
Fax: 614-458-5200
townsendr@battelle.org

H.44 Conflicts of Interest Compliance Plan

The Contractor shall submit a Conflicts of Interest (COI) Compliance Plan to the Contracting Officer for approval within 60 days after the award date of this contract. The Plan shall address the Contractor's approach for adhering to the contract provision entitled "Organizational Conflicts of Interest" and describe its procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The overall purpose of the Plan is to demonstrate how the Contractor will assure that its operations meet the highest standards of ethical conduct, and how its assistance and advice are impartial and objective. The Plan shall specifically address:

(a) How COI issues will be identified and resolved during contract performance.

(b) How the Contractor will ensure its work force is aware of and complies with COI requirements.

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

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

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

(a) The term "a risk defined in this contract as unusually hazardous or nuclear" as used in FAR Clause 52.250-1 (Contract Clause I.59) means the risk of legal liability to third parties (including legal costs as defined in paragraph jj. of Section 11 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2014jj.), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act) arising from actions or inactions in the course of the following performed by the Contractor under this contract:

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

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

a. The Department of Energy MPC&A activities in Ukraine under the Agreement Between the Department of Defense of the United States of America and the Ukraine State Committee on Nuclear and Radiation Safety Concerning Development of State Systems of Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine, dated December 18, 1993, and any extension thereto;

b. The Department of Energy's MPC&A activities in Belarus under the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote

the Prevention of Nuclear Weapons Proliferation, dated June 23, 1995, and any extension thereto;

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

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

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

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

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

(5) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary for Nuclear Security, non-proliferation, emergency response, antiterrorism and similar critical national security activities involving the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices; provided that the activity relates to

materials that are weapons usable or otherwise have the potential for mass destruction and further provided that the request or approval specifically makes the indemnity provided by this clause applicable to that particular activity.

(b) The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price Anderson Act, section 170d. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210d.) or where the indemnification provided by the Price-Anderson Act is limited by the restriction on public liability imposed by section 170e. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210e.) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the contractor is exposed.

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

a. Battelle Energy Alliance, LLC ("BEA"),

b. BEA's member company: Battelle Memorial Institute,

c. BEA's Teaming Subcontractors: BWX Technologies, Inc. and Washington Division of URS Corporation.

H.46 Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009 (Feb 2009)

Preamble:

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 or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The 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.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed 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 must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the inspector general.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

Contractors must include this clause in every subcontract over $25,000 that is funded, in whole or in part, by the Recovery Act unless the subcontract is with an individual.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See http://www.dol.gov/esa/whd/contracts/dbra.htm .

E. Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under paragraph H below.

G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

Note: The following paragraphs, H, I, and J, are in effect until the FAR is modified to implement these provisions of the Recovery Act. The Contractor agrees that the Contracting Officer may unilaterally modify the contract to incorporate the FAR clauses that implement the Recovery Act. The following paragraphs will no longer be valid and

the contract will be considered modified to add the new FAR provisions and clauses in Section I.

H. American Recovery and Reinvestment Act-Reporting Requirements

(a) Definitions. As used in this clause -
"First-tier Subcontract" means a subcontract awarded directly by a Federal government prime contractor funded by the Recovery Act.
"Jobs Created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part- time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.
"Jobs retained" means an estimate of those previously existing unfilled positions that are filled as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part- time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.

"Total Compensation" means the complete pay package of contractor employees, including all forms of money, benefits, services, and in-kind payments, consistent with the regulations of the Securities and Exchanges Commission at 17 CCR 229.402.

(b) This contract requires products and/or services which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor that receives contracts from a Federal agency under the Recovery Act to report on use of funds.

(c) Reporting starts with the later of the first calendar quarter in which the contractor invoices the Government for work funded by Recovery funds, or the second calendar quarter of 2009. Reporting is required not later than 10 days after the end of each calendar quarter. The Contractor shall report the following information, using the online reporting tool available at TBD. If the tool is not available when the contractor's report is due, the contractor shall maintain the data necessary to report for that quarter when the tool becomes available or submit the report in hard or soft copy if required by the Contracting Officer.

(1) the amount of recovery funds invoiced by the contractor, cumulative since the beginning of the contract;

(2) a detailed list of all services performed or supplies delivered for which the contractor has invoiced, including –

(i) project title, if any;

(ii) a description of the project;

(iii) an assessment of the contractor's progress towards the completion of the requirements of the contract (i.e., not started, less than 50% completed, completed 50% or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(iv) an estimate of the number of jobs created by the project, in the United States and outlying areas; and

(v) an estimate of the number of jobs retained by the project, in the United States and outlying areas. A job cannot be reported as both created and retained.

(3) the Government contract number.

(4) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded if –

(i) in the Contractor's preceding fiscal year, the Contractor received--

(A) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(5) detailed information on any first-tier subcontract over $25,000, where the subcontractor is not an individual, awarded by the contractor, funded under the Recovery Act, to include the following:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and of the subcontractor's parent company, if any.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System code.

(vi) Funding agency.

(vii) A description of the product or service to be provided under the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor physical address including street address, city, state and nine-digit zip code and congressional district if in the United States.

(x) Subcontract primary performance location including street address, city, state and nine-digit zip code and congressional district if in the United States.

(xi) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the subcontract is awarded if –

(i) entity in the subcontractor's preceding fiscal year, the subcontractor received --

(A) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(ii) the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986,

(Note: the information in paragraphs (i) through (x) are not required to be reported for any contractor or first-tier subcontractor whose gross income did not exceed $300,000 in the previous tax year.)

(6) For subcontracts under $25,000 or any subcontracts awarded to an individual, the total number of subcontracts awarded in the quarter and their total dollar amount.

I. Audit and Records—Negotiation

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) Comptroller General—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's or any subcontractors' directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

J. Buy American

[When using funds appropriated under the American Recovery and Reinvestment Act for construction, use clauses 52.225-XX, 52.225-, 52.225-ZZ, or 52.225-.WW. Use 52.225-.XX and 52.225-YY for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States under $7,443,000 and 52.225-ZZ and 52.225-WW for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States and over $7,443,000.]

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

(1) Contractor agrees to be subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement). Specifically, and without limitation, subject inventions and data produced in the performance of this contract and subcontracts related to the ITER project are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property (the Annex) attached under Part III - List of Documents, Exhibits, And Other Attachments, Section J Attachment S of this contract.

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

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

(4) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly

distribute data produced in the performance of this contract. Contractor will deliver, at a minimum, to DOE, copies of all ITER-related peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliance with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.

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

H.48 Non-Federal Agreements for Commercializing Technology (Pilot)

This Clause implements a PILOT program for a new technology transfer mechanism, Agreements for Commercialization of Technology (ACT). In accordance with the requirements specified in this Clause, the Contractor may conduct privately-sponsored research at the Contractor's risk for third parties. In performing ACT work, the Contractor may use staff and other resources associated with this Contract for the purposes of conducting research and furthering the technology transfer mission of the Department, on the condition that such use does not interfere with Contractor's activities conducted as authorized by other parts of this Contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in Contractor's custody or available to the Contractor under this Contract (unless specifically excluded by the Contracting Officer). For Contractor's activities conducted under authority of this Clause, the 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 Laboratory. In exchange for accepting such risks, or for other private consideration provided by the Contractor, the Contractor is authorized to negotiate separate agreements (ACT agreements) with the sponsoring third parties. Under ACT agreements, the Contractor may charge those parties additional compensation beyond the direct costs of the work at the Laboratory. Any statement of work involving Federal funds or falling within the scope of a Federally-funded contract or award (other than this Contract) shall not be eligible for an ACT transaction.

DOE and the Contractor recognize that implementation of ACT under this Clause is a PILOT program authorized by the Department and that during the PILOT either party may suggest changes to the program based on the experiences gained. Furthermore, the Contractor recognizes that the Department may decide to end the PILOT at any time and that termination of the PILOT by the Department will be in accordance with Paragraph 12, below.

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

Contractor may perform work for non-federal entities, in accordance with the requirements of this Clause.

2. *Contractor's Implementation*. The 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 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 Contractor conducts on behalf of the Government under this Contract, and complies with FFRDC requirements applicable to the Facility. If the Government determines that an activity conducted under this Clause interferes with the Department's work under the Contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the 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 Facility's mission by providing a written notice excluding said property from the 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 Contractor. The Contracting Officer shall provide to the Contractor in writing its decision, identifying the issues and reasons for the decisions. The 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 Contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

   d. Contractor must utilize its standard Laboratory subcontracting procedures for any work subcontracted by the Laboratory under the Contract. Otherwise, the Contractor may subcontract ACT work scope that is not performed under the Contract using commercially reasonable subcontracting practices and terms. Costs for performing such subcontracting activities outside the scope of the Contract are not reimbursable under the Contract;

e. Must make available to DOE a summary of project information for each active ACT project, consisting of: total estimated costs; project title and description; project point of contact; and, estimated start and completion dates;

f. Is responsible for addressing the following items in ACT agreements as appropriate, as they are in non-federal WFO agreements: disposition of property acquired under the agreement, export control, notice of intellectual property infringement, and a statement that the Government and/or Contractor shall have the right to perform similar services in the Statement of Work for other Parties as otherwise authorized by this Contract subject to applicable data restrictions;

g. Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE contractor has its own pre-approved publications statement, and this should be used; and

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

DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN [INSERT NAME OF CONTRACTOR] ACTING IN A PRIVATE CAPACITY AND [THE OTHER IDENTIFIED PARTY(IES)]. 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 Contractor is hereby authorized to negotiate terms and conditions between the Contractor and third parties when entering into ACT agreements. The 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 Contractor due to such terms and conditions.

b. The Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT Agreement.

i. A complete Package will include at a minimum: the identity of the parties to the ACT Agreement; the principal place of performance; any foreign ownership or control of the ACT Agreement parties; a Statement of Work; an estimate of costs incurred under the 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 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 Contractor offered the option to use CRADA and WFO alternatives (see Paragraph 7a) sufficiently that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and WFO 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; applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the private 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 otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.

ii. If the Contractor, Contractor's parent, member, subsidiary, or other entity in which the Contractor, Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT Agreement, the 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).

iii. If the ACT Agreement includes a foreign entity as a party or the statement of work includes the use of human subjects, animal subjects, classified or sensitive subject matter or describes a work scope involving high risks or

hazards including environmental issues, the 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 Contractor under subparagraph b. of this Paragraph within ten (10) business days of receiving the Package and provide the 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 missions of the Facility; (2) will not adversely impact programs assigned to the Facility; (3) will not place the Facility 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 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 Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the Contractor agrees to not further pursue the work described in the package or incur additional costs under the Contract for the work described in the Package.

i. The Contractor may request a preliminary determination that the proposed scope of work is consistent with the Facility mission 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 Contractor may begin work under the ACT Agreement at the Contractor's risk pending final approval of the complete Package. The Contractor must submit a complete Package, as identified in subparagraph 4b 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 Contractor, as no Federal funds will be used to fund any work conducted under this Clause.

ii. If the Contractor, Contractor's parent, member, subsidiary, or other entity in which the Contractor, 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 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 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 Contractor's work under this Clause, the Contractor is entirely at risk and the Government shall have no risk.

6. *Costs*. All direct costs associated with 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 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.

   a. Work conducted under this Clause shall be excluded from Contract award fee calculations and such fee shall not be allocable to work conducted under this Clause.

   b. No Federal funds will be used to fund work conducted under this Clause.

7. *Organizational Conflict of Interest.* Contractor shall conduct work under this Clause in a manner that minimizes the appearance of conflicts of interest and avoids or neutralizes actual conflicts of interest with Contractor's functions under this Contract. Accordingly, Contractor shall develop a Master Organizational Conflict of Interest Mitigation Plan (OCI Plan). The Master OCI Plan should address OCI issues that arise as a result of the Contractor taking a financial interest in ACT projects, especially in those cases where the Contractor retains rights in ACT IP. Such Master OCI Plan shall be provided to the Contracting Officer for review and approval as soon as practicable after execution of the Contract modification incorporating this Clause into the Contact. In addition to those elements expressly stated in the Master OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The Master 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 WFO agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe WFO agreements, CRADAs and ACT, and will include the relative disposition of IP rights and the costs (including any additional compensation to the Contractor under ACT) under each agreement for the scope of work being proposed for the Laboratory.

   b. *Priority of Work*. The Contractor shall not give work under ACT any special attention or priority over other work at the Laboratory. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work at the Laboratory that it would normally have if performed under a

non-Federal WFO agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the Contractor's input.

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

d. *Right of Inquiry for ACT IP Designation.* DOE Patent Counsel may inquire into Contractor's designation of any invention or data as arising under an ACT transaction. Contractor is responsible for curing any defect identified in such inquiry, and if 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 – Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor] clause of this Contract.

b. In reporting ACT inventions, the 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 ACT Protected Information shall also be marked to identify the ACT agreement under which the data was generated.

d. The 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 Contractor receives ownership or license rights to ACT IP, the Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this Contract.

f. As an alternative to subparagraph e., the Contractor may elect to retain private ownership of the ACT IP and commercialize the IP using its private funds, where

no costs for developing, patenting, and marketing will be allowable under this Contract. The Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (h) of the Technology Transfer Mission clause of this Contract.

g. 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. Except as provided in this paragraph 8, licensing of ACT Subject Inventions the Contractor retains in its private capacity will not be subject to the Technology Transfer Mission clause of this Contract.

9. *Contractor Liability and Indemnification.*

a. General Indemnity.

(i) The 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, 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 Contractor, and not directly resulting from the fault or negligence of the Government, the Department, or persons (other than the 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 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 Facility as part of the Statement of Work; and (3) the specific activities performed under the ACT transaction are normally performed by the DOE Contractor at the Facility.

(iii) Notwithstanding the provisions in a (i) and a (ii) above, the 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 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 Program for the Facility. Above the applicable liability limit, 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 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 Facility. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the 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 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 Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. In respect to this clause, neither the Government nor the 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 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 Contractor. No settlement for which the Contractor would be responsible shall be made without the Contractor's consent, unless required by final decree of a court of competent jurisdiction.

(ii) Where Contractor assigns the responsibility for indemnifying the Government under subsection c (i) above to other ACT Participants, DOE agrees to seek such indemnification from the Contractor only to the extent not satisfied after reasonable efforts to obtain indemnification from those other ACT Participants.

d. Claims and liabilities resulting from Contractor’s performance of work under an ACT transaction authorized pursuant to this Clause shall not be subject to the Contract clause entitled "Insurance - Litigation and Claims." In no event shall the Contractor be reimbursed under the 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 Contractor's performance under this clause.

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

10. *ACT Records.* All records associated with Contractor's activities conducted under authority of this Clause shall be treated as Contractor-owned records under the provisions of the Access to and Ownership of Records clause of this Contract.

11. *Reports and Abstracts*. The Contractor shall produce the following deliverables for each ACT Agreement:

    a. An initial abstract suitable for public release at the time the ACT transaction is approved by DOE;

    b. A non-proprietary final report, upon completion or termination of the Agreement, to include a list of subject inventions; and

    c. Where pursuant to the ACT Class Waiver, the Government reserves the right to use generated data after the particular project expires, computer software in source and executable object code format as defined within the statement of work or elsewhere within the Agreement.

12. *Termination of ACT Authority.* The PILOT Program implemented by this Clause will terminate three years from the date of the Contract modification adding this Clause to the Contract, unless renewed by the Contracting Officer. The Government may provide the Contractor with written notice to terminate Contractor’s authority to conduct work under this Clause at any time. If the Contractor’s authority to conduct work under this Clause has expired or been terminated, the Contractor may be permitted, subject to any other provisions of this Clause, to complete any work that was DOE approved work at the time Contractor’s authority to conduct work under this Clause was terminated by the Government.

13. *Successor Contractor*.

    a. To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor contractor of the Facility, ACT Agreement(s) executed under this Clause and any contractual instruments associated therewith may be novated to the successor contractor with the mutual consent of the Contractor, the successor contractor, and the parties to the affected

ACT Agreement(s). If the ACT Agreement(s) cannot be novated, then the Contractor as a private sponsor shall be permitted to enter into a Non-Federal Work for Others agreement with the successor contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE WFO policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT Agreement.

b. The Contractor may retain private ownership of any individual piece of ACT IP that it obtained during the term of the Contract if the Contractor demonstrates:

   i. the ACT IP was successfully commercialized or deployed in the commercial marketplace using private funds; or

   ii. the Contractor expended at least $20,000 (USD) of private funds for patenting, marketing, licensing, or maturing the ACT IP.

c. If the Contractor has not satisfied the criteria of Subparagraph b. to this Paragraph, then the Contractor and Contracting Officer, with input from the DOE Patent Counsel providing oversight to the Facility shall, prior to expiration or termination of the Contract, enter into negotiations to determine an equitable distribution of rights in the affected ACT IP. Such negotiations shall consider the equities of the parties with respect to each piece of intellectual property including, at a minimum, the private expenditures made by the Contractor for patenting, marketing, licensing, and maturing the ACT IP up to the date of Contract expiration or termination; which party is best positioned to appropriately commercialize the ACT IP; and any other equities that may apply under the circumstances.

14. *Minimum Reporting Requirements for ACT Activities.* During the ACT PILOT, the 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, the number of private sector entities engaged through ACT that had not previously engaged the Laboratory and the number that had not previously engaged any DOE/NNSA laboratory, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for laboratory engagement. Also during the PILOT, the Contractor shall report the above-identified data semiannually to DOE 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 Contract. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

H.49 Employee Compensation: Pay and Benefits

(a) Contractor Employee Compensation Plan

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

A description of the Contractor Employee Compensation Program should include the following components;

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

(b) Total Compensation System

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

(c) Reports and Information

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

(1) An Annual Contractor Salary-Wage Increase Expenditure Report to include,

at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.

(2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the Central Contractor Registration (CCR) per FAR 52.204-10.

(3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation no later than March 1 of each year.

(d) Pay and Benefit Programs

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

(1) Incumbent Employees are the employees who are regular employees of the incumbent contractor.

(A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Bechtel B&W Idaho, LLC for at least the first year of the term of the Contract.

(B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Bechtel B&W Idaho, LLC. Comparability of the total benefit package shall be determined by the CO in his/her sole discretion.

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.

(2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

(A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

(i) Any proposed major compensation program design changes prior to implementation.

(ii) An Annual Compensation Increase Plan (CIP). The Compensation Increase Plan (CIP) should include the following components and data:

(1) Comparison of average pay to market average pay.

(2) Information regarding surveys used for comparison.

(3) Aging factors used for escalating survey data and supporting information.

(4) Projection of escalation in the market and supporting information.

(5) Information to support proposed structure adjustments, if any.

(6) Analysis to support special adjustments.

(7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

(8) A discussion of the impact of budget and business constraints on the CIP amount.

(9) Comparison of pay to relevant factors other than market average pay.

(iii) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key

personnel not included in the CIP. For those key personnel included in the CIP, DOE will approve salaries upon the initial contract award and when key personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously indicated).

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

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

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

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

(iii) Is offered employment with a parent or affiliated company, or

(iv) Is discharged for cause.

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

(e) <u>Pension and Other Benefit Programs</u>

(1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for Employees or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.

(2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.

(3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits

under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison Method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.

(A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

(B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

(4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived by the Contracting Officer.

(5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll, unless waived by the Contracting Officer.

(6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.

(7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.

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

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

(10) Each contractor will respond to quarterly data calls issued through Ibenefits, or its successor system.

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

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

(2) Except for Commingled Plans in existence as of the effective date of the contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(g) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

(1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.

(2) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.

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

(4) For existing Commingled Plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan.

(5) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.

(6) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.

(7) The Pension Management Plan shall include the following:

(A) A Pension Management Plan (PMP) discussing the Contractor's plans for management and administration of all pension plans consistent with the terms of this contract. The PMP shall be updated and submitted to the Contracting Officer in draft annually no later than 45 days after the last day of the Plan year along with its draft actuarial valuation.

(B) Within thirty (30) days after the date of the submission, appropriate Contractor representatives shall meet with the Contracting Officer to discuss the Contractor's proposed draft annual update of the PMP to specifically discuss any anticipated changes in the projected pension contributions from the prior year's contributions and any discrepancies between the actual contributions made for the most recent year preceding that meeting and the projected contributions for that year which the Contractor had submitted to the Contracting Officer the prior year. The annual revision of the PMP shall include:

(i) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s).

(ii) If the actuarial valuation submitted pursuant to the annual PMP update indicates that the sponsor of the pension plan must impose pension plan benefit restrictions, the Contractor shall provide the following information:

(aa) The type of benefit restriction that will take place,
(bb) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction, and
(cc) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.

(iii) A detailed discussion of how the Contractor intends to manage the pension plan(s) to maximize the contribution predictability (i.e. forecasting accuracy) and contain current and future costs, to include rationale for selection of all plan assumptions that determine the required contributions and which impact the level and predictability of required contributions. The Contractor is required to annually establish a long term (e.g. five year) plan that outlines the projected retirement plan costs, and any planned action steps to be taken to better manage predictability. The contractor must also share the following information with the Department during the meeting:

(aa) Strategy for achieving and maintaining fully-funded status of the plan(s)
(bb) Investment policy statement for the plan, with any recent updates
(cc) Results of recent asset liability studies (required to be performed every 3 years or after a significant event) including rational for maintaining current asset allocation strategy.
(dd) Comparison of budget projections submitted to the Department to actual contributions

(ee) Any recent reports, findings, or recommendations provided by plan's investment consultant.

(ff) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years)

(iv) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.

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

(1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

(2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

(i) Reporting Requirements for Designated Contracts

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

(1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.

(2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.

(3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(j) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

(1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

(A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
(B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
(C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
(D) the Summary Plan Description; and,
(E) any such additional information as requested by the Contracting Officer.

(2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:

(A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,
(B) provide the dollar estimate of savings or costs, and
(C) provide the basis of determining the estimated savings or cost.

(k) Terminating Operations

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

(1) No further benefits for service shall accrue.

(2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.

(3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.

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

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

(l) Terminating Plans

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

(2) To the extent possible, the contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.

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

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

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

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

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

(m) Special Programs

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

(n) Definitions

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

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

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

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

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

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

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

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

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

(End of clause)

H.50 Workers' Compensation Insurance

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

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

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

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

(End of clause)

H.51 Post Contract Responsibilities for Pension and Other Benefit Plans

(a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at Idaho National Laboratory (collectively, the "Plans"), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled plan is involved, the contractor shall:

(1) spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.

(2) bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

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

(1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

(2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the

time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

(End of clause)

H.52 Risk Management and Insurance Programs

For use in M&O and non-M&O cost reimbursement solicitations and contracts where work had been previously performed under a DOE M&O contract and the successor Contractor is required to employ all or part of the former Contractor's workforce and assumed the management and administration of long-tailed insurance claims (i.e., post closure insured/self-insured claims) 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.

DOE H-2073, RISK MANAGEMENT AND INSURANCE PROGRAMS

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

1. BASIC REQUIREMENTS

   a. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors) unless it is with unallowable dollars.
   b. Insurance programs and related costs must comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 28.308 – Self Insurance, FAR 31.205-19, Insurance and Indemnification, , and DEAR970.5228-1, Insurance-Litigation and Claims.

   c. The insurance program must be conducted in the government's best interest and at reasonable cost.

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

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

f. Ensure self-insurance programs include the following elements:

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

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

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

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

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

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

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

c) Annual accounting and justification as to the reasonableness of the claims reserve available for Contracting Officer's review.

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

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

2. PLAN EXPERIENCE REPORTING. The Contractor shall:

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

1) The amount paid for each claim.
2) The amount reserved for each claim.
3) The direct expenses related to each claim.
4) A summary for the year showing total number of claims.
5) A total amount for claims paid.
6) A total amount reserved for claims.
7) The total amount of direct expenses.

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

c. provide additional claim financial experience data as may be requested on a case-by-case basis.

3. TERMINATING OPERATIONS. The Contractor shall:

a. ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating if applicable.

b. identify and provide insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.

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

4. INSURANCE POLICY CANCELLATION. The Contractor shall:

   a. obtain the written approval of the Contracting Officer for any change in program direction; and

   b. ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

(End of Clause)