Part I – The Schedule

Section H

Special Contract Requirements

Table of Contents

H-1 Pacific Northwest National Laboratory Land/Facilities

DOE agrees to furnish and make available to the Contractor, for the performance of work under this Contract, the Laboratory land/facilities designated as follows:

(a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Pacific Northwest National Laboratory Site at Richland, Benton County, Washington and Sequim, Clallam County, Washington; and

(b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this Contract.

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

Unless otherwise authorized by this Contract or as agreed to by the Parties, the Contractor agrees to provide to DOE the exclusive use of the Contractor-owned facilities and the beneficial use of the Contractor-owned land for the operations of the Pacific Northwest National Laboratory, in accordance with the rights and obligations set forth in Section J, Appendix J, Advance Agreement on Costs and Associated Use of Battelle Owned Facilities and Real Property. Before exercising its right to make any part of the Contractor-owned land or facilities available to another entity, the Contractor will confer with the Contracting Officer or his/her designee(s). **[M881]**

A list of current approved Government-owned and leased and Contractor-owned and Contractor-leased Laboratory land/facilities is contained in Section J, Appendix H – List of Approved Laboratory Land/Facilities (Owned and Leased).

Subject to mutual agreement land/facilities may be authorized or removed in the performance of the work under this Contract.

The Contractor may use the above-mentioned Government-owned or leased land, facilities and property in its custody under this Contract to conduct research and development activities for its own account, to the extent and in accordance with Clauses H-44 and H-45 of this Contract or as agreed to by DOE and the Contractor. **[M881]**

H-2 Implementation Procedures for Public Affairs

(a) Public Affairs and News Releases

(1) The Parties recognize the importance of coordination with regard to areas covered in this clause so as to achieve public policy objectives important to the nation. As a federal agency, DOE must assure that news releases which describe its policies and procedures as related to the operation of its national scientific laboratories do so on an accurate and timely basis. Accordingly, the Parties recognize the importance of advanced coordination of significant news media activities, including news releases, major announcements, and significant interactions with national news media. The Parties agree that the procedures and policies established in this clause shall constitute the procedures required by the clause in this Contract entitled Public Affairs.

(2) Coordination is especially important in certain circumstances and the Contractor shall be guided by the following principles. The Contractor will:

i. Coordinate and communicate with the PNSO Public Affairs Officer on interactions with Congress.

ii. Ensure that State, local, territorial, and Indian Governments are provided an opportunity to participate in development of national energy and energy-related policies and programs, and particularly in those policies and programs which directly affect them.

iii. Seek public participation in coordination with the PNSO Public Affairs Officer to the extent allowable in pending policy and planning issues which are substantial and which can have major impacts on the public.

(3) The Contractor will exercise diligent efforts to inform DOE in advance of significant public affairs events or other major activities, including presentations, publications, significant audio-visual materials, and special exhibits. When such advance exchange is not possible operationally, the Contractor shall promptly furnish the released information to the DOE concurrent with its release. When preparing public information about the Contractor's performance or activities, DOE will exercise the same diligence in attempting to coordinate with the Contractor prior to its release.

(4) The Contractor shall not release information attributed directly to DOE or which purports to represent established DOE policy without advance concurrence of the PNSO Public Affairs Officer. Nothing in this clause shall be construed so as to limit the right of the Contractor to publicize the results

of its scientific research, consistent with the advance coordination principles outlined above.

(5) In all public releases of information in communication products related to the Laboratory, identification of the facility as a Department of Energy facility shall be made prominently in the communication product involved. This identification should include a statement that the Laboratory is a DOE facility which is operated by the Contractor under a performance based management contract. The inclusion of such a standard statement does not replace, however, the requirement for prominent identification of the Laboratory as a DOE facility in an appropriate editorial context in the communications product.

(6) Nothing in this clause is intended to interfere with requirements associated with information that is classified or controlled under a statute or Executive Order.

(b) Public Involvement

(1) The Contractor agrees to provide public involvement where appropriate and in cooperation with the PNSO Public Affairs Officer.

(2) DOE recognizes such activities as an integral component of Contractor management responsibilities in the execution of the Contract. The Parties recognize their mutual responsibilities to coordinate public involvement activities and to coordinate all related external communications consistent with the principles outlined in paragraph (a), Public Affairs and News Releases, above.

(3) In carrying out Laboratory public involvement activities, the Contractor agrees that it will make no statements contrary to DOE policy or enter into any commitments with external parties regarding departmental actions without DOE concurrence.

(End of Clause)

H-3 Transportation

The Contractor shall use carriers providing services commensurate with DOE program needs, taking full advantage of special reduced rates where available.

(End of Clause)

H-4 Source and Special Nuclear Materials

The Contractor shall comply with all applicable regulations and instructions of DOE relative to the control of and accounting for source and special nuclear material (as these terms are defined in applicable regulations). The Contractor shall make such reports and permit such inspections as DOE may require with reference to source and special nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials. The Contractor shall also submit to DOE, as requested for all specified nuclear materials, the annual Nuclear Materials Inventory Assessment and the Nuclear Materials Forecast.

(End of Clause)

H-5 Workers' Compensation

(a) Pursuant to State of Washington Revised Code (RCW) Title 51, the Department of Energy (DOE), Richland Operations Office (RL) is a group self-insurer for purposes of workers' compensation coverage. The coverage afforded by those workers' compensation statutes shall, for work under this Contract in the state of Washington, be subject to the following:

(1) Under the terms of a Memorandum of Understanding (MOU) with the Washington Department of Labor and Industries (L&I), DOE has agreed to perform all functions required by self-insurers in the State of Washington. While this MOU is in effect, the Contractor is not required to pay for workers compensation coverage or benefits except as otherwise provided below or as directed by the Contracting Officer.

(2) The Contractor shall submit to DOE (or other party as designated by DOE for transmittal to the L & I), such payroll records required by the workers compensation laws of the State of Washington.

(3) The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the Department, the accident reports provided for by RCW Title 51, Section 51.28.010, or any other documentation requested by DOE or the L&I pursuant to the workers compensation laws of the State of Washington.

(4) The Contractor shall take such action, and only such action, as DOE requests in connection with any accident reports, including assistance in the investigation and disposition of any claim thereunder and, subject to the direction and control of DOE, the conduct of litigation in the Contractor's own name in connection therewith.

(5) Under RCW Title 51.32.073, DOE is the self-insurer and is responsible for making quarterly payments to the State Department of L&I. In support of this

arrangement, the Contractor is responsible for withholding appropriate employee contributions and forwarding on a timely basis these contributions plus the employer-matching amount to DOE.

(6) The workers' compensation program shall operate in partnership with Contractor employee benefits, risk management, and environmental, safety, and health management programs. The Contractor shall cooperate with DOE for the management and administration of DOE, Richland Operations Office (RL) self-insurance program that provides workers' compensation benefit coverage to Contractor employees at PNNL.

(7) The Contractor must certify to the accuracy of the payroll record used by the Department in establishing the self-insurance claims reserves, and cooperate with any state audit.

(8) The Contractor shall submit to the Contracting Officer, a yearly evaluation and analysis of workers' compensation cost as a percent of payroll compared with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the Department (once DOE has provided the Contractor with the necessary data to perform the analysis required in this paragraph).

(b) The Contractor will provide statutory worker's compensation coverage for staff members performing work under this Contract outside of the State of Washington and not otherwise covered by the State of Washington worker's compensation laws.

(c) Subcontractors performing work under this Contract on behalf of the Contractor are not covered by the provision of the Agreement referenced in (a)(1) of this clause. The Contractor shall flow-down to its subcontractors the requirement to provide statutory worker's compensation coverage for the subcontractor's employees. The Contractor shall have no responsibility for subcontractor worker's compensation when it includes this requirement in the subcontract.

(End of Clause)

H-6 Unemployment Compensation

(a) The Contractor will provide coverage for staff members under state unemployment compensation laws in any state in which any part of the work is carried on.

(b) DOE shall be given the benefit of any employer experience rating credit received by the Contractor and attributable to wages subject to contribution paid under this Contract.

(End of Clause)

H-7 Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties

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

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

(End of Clause)

H-8 Allocation of Responsibilities for Contractor Environmental Compliance Activities

(a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this Contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.

(b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "Parties", for implementing the environmental requirements at facilities within the scope of the Contract. In this Clause, the term "environmental requirements" means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, including the *Hanford Federal Facility Agreement and Consent Order*, consent orders, permits, and licenses.

(c) (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this Contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The

allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this Contract.

(ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the Contract.

(d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this Contract, and the Contractor has been directed in by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(End of Clause)

H-9 Other Intellectual Property Related Matters

(a) Transfer of Patent Rights to a Successor Contractor

As consideration for the Contractor's commitment to expend private monies in its privately-funded technology transfer effort under this Contract at a level at least commensurate with such expenditures under its prior contracts, including an average of five hundred thousand dollars ($500,000) per year for activities under the privately-funded technology transfer program which includes a combination of the filing of an average of 7 patent applications, and no fewer than 5, per year during the period of this Contract, including expenses related to the patenting, marketing, licensing and development of Subject Inventions, the Parties agree that at the termination or expiration of this Contract, the following terms and conditions shall apply to Subject Inventions which were elected to be pursued under the Contractor's privately-funded technology transfer program, and to the licenses and royalties generated therefrom: **[M881]**

(1) In the event Contractor has executed a license, assignment or other commercialization agreement to a Subject Invention prior to termination or

expiration of this Contract in which royalties, fees, equity or other consideration is to be or has been paid (hereinafter "agreement"), the distribution of net income from royalties, equity, or any other consideration received or to be received under such agreement shall remain as prior to Contract termination or expiration and shall continue for the duration of such agreement. As set forth in paragraph (d) below, fifty-one percent (51%) of such net income shall go to the Successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a Successor Contractor, to such other entity designated by the Government, and forty-nine percent (49%) may be retained by the Contractor for use in accordance with 35 USC Section 200 et seq. Administration of agreements related to such Subject Invention, shall remain with the Contractor. Title to such Subject Invention shall remain with the Contractor provided the Contractor has fulfilled the commitments set forth in paragraph (a) above. If the Contractor has not fulfilled the commitments set forth in paragraph (a) above, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or such other entity designated by the Government.

(2) In the event Contractor has not executed an agreement (as defined in paragraph (1) above) to a Subject Invention, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or to such other entity designated by the Government, unless Contractor can demonstrate that it has expended at least twenty thousand dollars ($20,000) of private monies in its privately funded technology transfer program toward the patenting, licensing, marketing and/or development of such Subject Invention, and the Contractor has fulfilled the commitments set forth in paragraph (a) above. In the event Contractor retains title to a Subject Invention under this paragraph, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.

(3) In the event Contractor retains title to Subject Inventions under paragraphs (1) or (2) above, and executes an agreement (as defined in paragraph (1) above) to such Subject Inventions after the termination or expiration of this Contract, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.

(4) The Contractor and the Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to Subject Inventions. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, DOE's need for continued operation of the Facility, potential commercial use, assumption of patent related liabilities, effective technology transfer, and the need to market the technology. Such

negotiations shall not change the disposition of title provided for in paragraphs (1) and (2) above unless mutually agreed by the Contractor and the Government.

(5) For any Subject Invention to which the Contractor maintains title or administration of an agreement under paragraphs (a)(1)-(2) above, the Contractor agrees that, to the extent it is able to do so in view of prior licenses or assignments, it will negotiate in good faith to enable the Successor Contractor to practice such subject invention in the form of CRADAs, Work For Others agreements, licenses or other appropriate agreements, in order to fulfill the missions and programs of the Facility. It is the intention of the Contractor to enable the Successor Contractor to continue operation of the Facility, including the Facility's technology transfer program. In any event, the Successor Contractor retains the nonexclusive royalty-free right to practice the Subject Invention on behalf of the U.S. Government.

(b) Costs

(1) Except as otherwise specified in the clause of this Contract entitled, "Technology Transfer Mission," as allowable costs for conducting activities pursuant to provisions of that clause, no costs are allowable as direct or indirect costs for the preparation, filing, or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs after the Contractor elects to pursue commercialization of a Subject Invention under its privately-funded technology transfer program pursuant to paragraph (f) below. Should the Contractor make such election after allowable costs have been incurred with respect to the patenting of a particular Subject Invention, such costs shall be repaid from private funds concurrent with such election.

(2) **RESERVED [M779]**

(3) **RESERVED [M779]**

(4) **RESERVED [M779]**

(c) Liability of the Government

(1) It is understood that the privately-funded technology transfer activities of the Contractor under this clause are not subject to the clause entitled, "Insurance–Litigation and Claims".

(2) The Contractor shall not include in any license agreement or assignment any guarantee or requirement, which would obligate the Government to pay any

costs or create any liability on behalf of the Government.

(3) The Contractor shall include in all licensing agreements and in any assignment of title the following clauses unless otherwise approved or directed by the Contracting Officer following consultation with the DOE Patent Counsel:

(i) "This agreement is entered into by Battelle Memorial Institute (BMI) in its private capacity. It is understood and agreed that the U.S. Government is not a party to this agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this agreement or the subject matter licensed assigned)."

(ii) "Nothing in this Agreement shall be deemed to be a representation or warranty by the U.S. Government of the validity of any of the patents or the accuracy, safety, or usefulness for any purpose, of any TECHNICAL INFORMATION, techniques, or practices at any time made available by BMI. The U.S. Government shall have no liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from:

(A) The production, use, or sale of any apparatus or product, or the practice of the INVENTIONS;

(B) The use of any TECHNICAL INFORMATION, techniques, or practices disclosed by BMI; or

(C) Any advertising or other promotional activities with respect to any of the foregoing, and LICENSEE shall hold the U.S. Government harmless in the event the U.S. Government is held liable. BMI represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert."

(d) Distribution of net income

In the event the Contractor engages in a privately funded technology transfer program under the clause of this Contract entitled, "Patent Rights – Management and

Operating Contracts, Nonprofit Organization or Small Business Firm Contractor" or the clause of this Contract entitled, "Rights in Data – Technology Transfer", such that private funds are utilized for technology transfer after the Contractor elects to pursue privately-funded commercialization of a Subject Invention or after the Contractor has received permission from the Contracting Officer to assert statutory copyright in a software program and received DOE approval to commercialize such software under its privately funded technology transfer program under paragraph (i) below, net income from such privately funded technology transfer program shall be distributed as follows:

(1) Fifty-one percent (51%) of net income shall be used at the Facility for scientific research, development and education consistent with the research and development mission and objectives of the Facility. Forty-nine percent (49%) of such net income may be used by the Contractor at a location other than the Facility if such use is for scientific research, development, and education consistent with the research and development mission and objectives of the Facility in accordance with 35 USC Section 200 et seq.

(2) "Net income" is defined as that amount remaining after the expense of patenting costs, licensing and marketing costs, payments to inventors, and other expenses incidental to the administration of Subject Inventions is deducted from gross income received.

(e) Equity Plan

It is the intent of the Government and the Contractor that the Contractor shall, in its discretion, take reasonable and prudent actions from both a commercial and stewardship of the Facility's technology transfer perspective related to the ownership of equity received from third parties under this Contract. The Contractor shall submit to the Contracting Officer a plan, which shall set forth principles for the Contractor's acquisition, retention and disposition of equity received from third parties as consideration for licenses or assignments granted to such third party. Such plan shall consider, at a minimum,

(1) the manner in which the Contractor shall acquire such equity in a third party, including the manner in which the Contractor shall apportion capital contributions to such third party between the relative value of private Contractor contributions and the value of contributions representing a license under a Subject Invention;

(2) the manner in which the Contractor shall hold such equity, given that the Government has an undivided 51% interest in that portion of such equity representing the value of contributions resulting from a license to such Subject

Invention;

(3) the manner in which the Contractor shall dispose of such equity, giving due consideration to the potential for a conflict of interest between the interests of the Government and the Contractor; and

(4) the manner in which the Contractor's inventors are compensated.

(f) The Contractor shall indicate whether a Subject Invention will be pursued under its government-funded technology transfer program or its privately-funded technology transfer program within six (6) months after the Subject Invention is reported to the Contractor, unless otherwise agreed in writing by the DOE Patent Counsel.

(g) In its privately-funded technology transfer program, the Contractor shall be substantially guided by the principles of U.S. Competitiveness and Fairness of Opportunity as set forth herein.

(h) When requesting approval from DOE to assert statutory copyright in a particular software package pursuant to the clause entitled "Rights in Data—Technology Transfer" (Clause I-93(e) herein), Contractor may request that commercialization of such software proceed under the provisions of this Clause H-9. If approved, no costs of such commercialization thereafter shall be allowable, and the proceeds of such commercialization shall be treated in accordance with paragraph (a) above as if such proceeds had resulted from the commercialization of a Subject Invention.

(End of Clause)

H-10 Continued Improvement Initiative

It is the intent of the Parties to continue to work together during the term of this Contract to develop and implement innovative approaches and techniques for improving Contractor performance and Contract administration. This initiative for continued improvement will focus on improving Contractor efficiency and effectiveness, enhancing Contractor accountability, gaining savings in Laboratory programs, improving cost-effective management of risks, and increasing efficiencies in Federal oversight of the Contract. Areas that the Parties will evaluate, include, but are not limited to, the following:

(a) Management/reduction of mandatory Hanford Site Services and ensure cost allocation equity;

(b) Policies and procedures related to the Technology Transfer mission of the Laboratory; and

(c) Incentive Compensation and/or other enhancements to variable pay programs.

(End of Clause)
[M881]

H-11 Standards of Contractor Performance Evaluation

(a) Use of objective standards of performance, self-assessment and performance evaluation

(1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of standardized performance goals and objectives as the measurement basis against which the Contractor's overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will focus on results to drive improved performance and increased effective and efficient management of the Laboratory.

(2) The Parties agree to utilize the process described within Section J, Appendix E "Performance Evaluation and Measurement Plan" (PEMP) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix E will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

(3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as a principal means of determining its compliance with the Contract Statement of Work and performance objectives identified within Section J, Appendix E. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.

(4) The Contractor shall provide formal status briefings for performance against Appendix E, as agreed to by the Laboratory Director and the Manager, PNSO. **[M813]**

(5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in

accordance with the terms and conditions of this Contract. The Office of Science, through the PNSO, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.

(6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the process described in Appendix E. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating for each goal. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix E that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., OIG, GAO, DCAA, etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. With exception of "for cause" reviews, the DOE Pacific Northwest Site Office will conduct no more than one management and operations review per year. The on-site portion of such reviews will normally last no more than two weeks.

(b) Standards of performance measure review

(1) The Parties agree to review the PEMP elements (measurement basis and performance measures/targets) contained in Appendix E annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the measurement basis and/or performance measures/targets for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new measurement basis and/or performance measures/targets and/or to modify and/or delete existing measurement basis and/or performance measures/targets of performance. It is expected that the measurement basis and performance measures/targets for objectives will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.

(2) Failure to include an objective or performance measure/target in the Contract Appendix E does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the Contract.

(3) In the event the Contracting Officer or HCA decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance.
[M432]

(End of Clause)

H-12 Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress (AL-2003-03)

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

(End of Notice)

H-13 Care Of Laboratory Animals

(a) Before undertaking performance of any contract involving the use of Laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a), above, of this provision.

(c) In the care of any animals used or intended for use in the performance of this Contract, the Contractor shall comply with USDA regulations governing animal care and usage, as well as all other relevant local, State, and Federal regulations concerning animal care and usage. In addition the Contractor will ensure that research will be conducted in a facility that either: (i) has a current National Institutes of Health (NIH) assurance number for animal care and usage, or (ii) is currently accredited for animal care and usage by an appropriate organization such as the Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC) International, or (iii) has a DOE Assurance Plan Number.

(End of Clause)

H-14 RESERVED [M707]

H-15 Privacy Act Records

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

(a) Intelligence Related Access Authorization (DOE-15)

(b) Personnel Radiation Exposure Records (DOE-35)

(c) Security Education and/or Infraction Reports (DOE-48)

(d) Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites (DOE-52)

(e) Counterintelligence Administrative and Analytical Records and Reports (DOE-81)

(f) Counterintelligence Investigative Records (DOE-84)

The parenthetical DOE number designations for each system of records refer to the official "System of Records" number published by the DOE in the Federal Register pursuant to the Privacy Act.

(End of Clause)

H-16 Administration of Subcontracts

(a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.

(b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this Contract.

(c) The DOE reserves the right to identify specific work activities in Section C "Description/Specifications" to be removed (de-scoped) from the Contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at $5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by Contractor

employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at $5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter into contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into a contract for work being performed by Contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this Contract, will be incorporated via a modification to the Contract. The Contractor will accept management and administration responsibilities, if so determined.

(d) To the extent that DOE removes (de-scopes) work from this Contract, any such removed or withdrawn work shall be treated as a change in accordance with the clause of this Contract, titled Changes (Dec 2000). A "material change" for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory's Estimated Fee Base. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor's annual available performance fee. The negotiation of fee will be in accordance with the Contract clause entitled "Determining Total Available Performance Fee and Fee Earned". The Parties will also negotiate appropriate adjustments to the Contractor's Subcontracting Plan or any other applicable Contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor's subcontracting base and goals. **[M881]**

(End of Clause)

H-17 RESERVED [M707]

H-18 RESERVED [M600]

H-19 Cap on Liability

(a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this Contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following:

(1) The cost principle at DEAR 931.205-47 titled "Costs Related to Legal and Other Proceedings" [DOE coverage—paragraph (h), Costs Associated with Whistleblower Actions];

(2) The clause titled "Property", paragraph (f)(1)(i)(C);

(3) The clause titled "Insurance – Litigation and Claims", (h), with respect to prudent business judgment only; and

(4) The clause titled "Insurance – Litigation and Claims", (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the clause titled "Property". **[M881]**

(b) The Contractor shall be liable for an amount not-to-exceed 1.25 times the maximum total available performance fee for each fiscal year. The amount of the Contractor's liability shall be calculated on a cumulative, per fiscal year basis. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to (a)(1) though (4) above.

(End of Clause)

H-20 Performance Based Management and Oversight

(a) Performance-based management shall be the key enabling mechanism for establishing the DOE-Contractor expectations on oversight and accountability. DOE expectations (outside of individual program performance and requirements of laws and regulations) and performance targets shall be established through the Performance Evaluation and Measurement Plan (PEMP) pursuant to the clause entitled "Standards of Contractor Performance Evaluation". This PEMP shall establish the expected strategic results in the areas of science and technology, stewardship, and management/operations excellence. The measurement basis for the science and technology performance goals shall be established by each major customer of the Laboratory, and customer evaluation will be the primary means of evaluating science and technology performance. The performance measures/targets for the management/operational goals shall be established by agreement with DOE. Confirmation of Contractor assurance results shall be the primary method for evaluating Contract management/operational performance. The types and level of evaluation utilized to confirm results are dependent on the Contracting Officer's determination of the effectiveness of the Contractor's assurance system and is described in the Section H Contract clause, entitled

"Contractor Assurance System". **[M600]**

(b) The performance-based management system shall be the primary vehicle for addressing issues associated with performance expectations. In the event of a substantive performance shortfall in any area, the appropriate improvement expectations and measures/targets will be incorporated into the PEMP and tracked through self-assessment and independent oversight, as appropriate.

(c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external regulators in assessing Contract compliance. **[M600]**

(End of Clause)

H-21 Shared Services

(a) Alternative Proposals

The Contractor may submit to the Contracting Officer alternative proposals for obtaining services currently provided by other contractors as Shared Services. All proposals will reflect innovative cost-effective approaches whereby the Contractor will obtain services in a manner reflecting the best interests of the Government and the Contractor. The Contractor will consider contractual and regulatory constraints in all proposals. The Contractor must submit proposals under this clause to the Contracting Officer a minimum of 90 calendar days in advance of the proposed date for transitioning services. The Contracting Officer shall accept, reject, or conditionally accept the proposal, in writing, within 90 calendar days of receipt. The Contracting Officer shall provide an explanation for any rejection.

(b) Cost-Efficiency Comparison Information

To facilitate the cost-efficiency comparisons required under paragraph (a) above, DOE agrees to provide pricing information associated with services provided by other Hanford Site contractors to the fullest extent possible and at the highest level sufficient to perform such analysis. DOE will deliver the information to the Contractor within 30 days of the Contractor's request or such time period as agreed to by the Parties.

(End of Clause)

[M873]

H-22 Lobbying Restriction (Energy and Water Act 2005) (AL-2005-02)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation

matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation. **[M422]**

(End of Clause)

H-23 Lobbying Restriction (Interior Act 2005) (AL-2005-02)

The Contractor agrees that none of the funds obligated on this award 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. **[M422]**

(End of Clause)

H-24 Determining Total Available Performance Fee and Fee Earned

In implementation of the clause in Section I entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," the following shall apply:

(a) There shall be no base fee for the period of this Contract. The Parties have agreed to a multi-year performance fee for the Contract period, to be 100% at risk, and determined as described below:

(1) In FY12, the total available performance fee is $9,000,000. **[M494]**

(2)

Fiscal Year	Estimated Fee Base	Performance Fee Available
FY 13	$904.2M	$11.9M
FY 14	$910.5M	$11.9M
FY 15	$902.8M	$12.5M
FY 16	$892.9M	$12.5M
FY 17	$892.9M	$12.5M

[M881]

(3) The Parties have agreed that the available performance fee shall be subject to adjustment in the event of a significant change (greater than plus or minus 10%) to the Laboratory's Estimated Fee Base for any fiscal year, or work scope. The Parties may re-negotiate, in good faith, the total available performance fee pool. [**M881]**

(b) Determination of Total Available Fee Amount Earned.

The Government shall, at the conclusion of each specified evaluation period, evaluate and/or validate the Contractor's performance in accordance with the clause in Section I entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." The evaluation of the Contractor performance shall

be in accordance with Section J, Appendix E "Performance Evaluation and Measurement Plan."

(End of Clause)

H-25 RESERVED [M707]

H-26 Advance Understandings on Allowable Costs

Allowable costs under this Contract shall be determined according to the requirements of DEAR 970.5232-2, Payments and Advances. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable under this Contract to the extent indicated:

1) Foreign Rental Car Insurance - Foreign rental car insurance is allowable to the extent it is not covered by an existing insurance plan being billed to the government or is required by law and is not personal in nature.

2) Home Office Expenses - Home Office expenses are allowable to the extent that such expenses are allowable per FAR 31.2 and DEAR 970.3102 and are allocable consistent with FAR 31.2 and the Cost Accounting Standards. These costs are initially capped at $5.4M per year to be reviewed annually.

3) Operational Support and Strategic Sourcing – In circumstances when there is a clear advantage to the Government for operational support to be sourced from Battelle, such costs will be deemed allowable under this Contract if expressly approved by the Contracting Officer.

4) Stipends and payments, if not otherwise unallowable under any other term of the contract, made to reimburse travel or other expenses - Researchers and students who are not employed under this Contract but are participating in research, educational or training activities under this Contract are allowable to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved in writing by the Contracting Officer. (Deviation authorized from FAR 31.205-44 (e))

5) Tuition Reimbursement – Tuition and fees for staff who are employed under this Contract are allowable to the extent the staff continue their employment during the period of reimbursement and this cost is not otherwise unallowable.

6) Payments, if not otherwise unallowable under any other term of the contract, to educational institutions - Tuition and fees for researchers and students who are not employed under this Contract but are participating in research, educational or training activities under this Contract, or institutional allowances in connection with fellowship or other research, educational or training programs are allowable. (Deviation authorized

from FAR 31.205-44 (e))

7) Rewards & Recognition - The cost incurred by the Contractor will be allowable, to the extent specified under FAR 31.205-6 (f), and as applicable to work under this Contract for administering the Contractor's Recognition and Reward Program for the Commercialization of Intellectual Property as described in the program description. Such costs shall include cash awards and rewards and recognition events to the extent that they are not otherwise unallowable.

8) Imputed interest costs - Leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP) are allowable, provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved in writing by the DOE Contracting Officer in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose.

9) ISM Awareness Program - PNNL has an Integrated Safety Management (ISM) Awareness Program (ISMAP) which is separate and distinct from the Laboratory's variable pay programs. ISMAP includes tangible awards valued at less than $25 each. The ISMAP awards are for PNNL staff for having participated in educational and survey safety activities that are linked to ISM program performance improvement and achievement or for supporting staff recognition and awareness in the areas of safety and wellness. Costs associated with the "ISM Awareness Program" are allowable subject to an annual ceiling amount. ISM Awareness Program tangible awards will not promote the Battelle name or logo. However, the PNNL branding logo is acceptable (i.e. Pacific Northwest National Laboratory branding logo, along with Operated by Battelle for the U.S. Department of Energy). Allowable cost is limited to tangible awards for PNNL staff, and any awards to non-PNNL employees will be an unallowable cost.

10) Management and Operations Sustainability Program – The PNNL Site Sustainability Plan is to reduce Greenhouse Gas emissions in accordance with H-43 and Departmental goals. To this end, Battelle is authorized up to $10,000 for use in creating and implementing sustainability initiatives to include tangible awards valued at less than $25 each. Tangible awards will not promote the Battelle name or logo. However, the PNNL branding logo is acceptable (i.e. Pacific Northwest National Laboratory branding logo, along with Operated by Battelle for the U.S. Department of Energy). Allowable cost is limited to tangible awards for PNNL staff, and any award to non-PNNL employees will be an unallowable cost.

(End of Clause)

[M881]

H-27 Employee Concerns Program

(a) The Contractor shall develop and maintain an employee concerns program (ECP) and plan to be reviewed and approved by DOE.

(1) Contractor and subcontractor personnel shall be informed of the availability of the ECP, their right to raise concerns relating to the environment, safety, health, or management of DOE-related activities through the Contractor or Departmental ECP programs and to do so without any fear of harassment or reprisal.

(2) The Contractor shall evaluate and attempt to resolve employee concerns in a manner that protects the health and safety of both employees and the public, ensure effective and efficient operation of programs, and use alternative dispute resolution techniques whenever appropriate.

(3) The Contractor shall conduct an annual self-assessment to measure the effectiveness of the ECP. Problems that hinder the ECP from achieving its objectives shall be corrected.

(4) The Contractor shall provide timely notification to the Department of any significant staff concerns or allegations of retaliation or harassment. The Contractor shall cooperate with any Departmental actions including requests for documentation or information involving employee concerns.

(b) The Contractor currently has in place an ECP that meets these requirements. If the Contractor revises the ECP, a copy of the revised ECP shall be provided to DOE for approval.

(End of Clause)

H-28 Greening the Government Through Federal Fleet and Transportation Efficiency

When performing motor vehicle fleet operations for the Department of Energy, the Contractor will conduct such operations in accordance with the requirements of Executive Order 13149 of April 21, 2000, Greening the Government Through Federal Fleet and Transportation Efficiency, including implementing guidance for the Department of Energy fleet. Such operations should include the use of environmentally preferable motor vehicle products in the maintenance of these vehicles when such products are reasonably available, and meet manufacturer's warranty requirement and applicable performance standards. Environmentally preferable motor vehicle products include re-refined motor vehicle lubricating oils, retread tires, and bio-based motor vehicle products.

(End of Clause)

H-29 RESERVED [M779]

H-30 Contractor Compensation, Benefits and Pension

(a) The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with 48 CFR 31.205-6, "Compensation for personal services." The Contractor's compensation system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 31.205-6 as supplemented by DEAR 970.3102-05-6. Costs incurred under a compensation program will generally be deemed reasonable if they are in accordance with the program accepted by the Contracting Officer, consistent with applicable cost principles, and conform to Contracting Officer approved applicable industry benchmarks. Further advance understandings on allowable costs are detailed in the attached Appendix A of this Contract.

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

(1) A description of the compensation program supported by the relevant data comparing it to other industry or relevant benchmark programs.

(2) Compensation System self-assessment and compensation system existing baseline package for DOE validation.

(3) Proposed compensation design changes that increase cost must be approved by the Contracting Officer prior to implementation.

(4) Annual Compensation Increase Plan (CIP).

(5) Individual compensation actions, as required in the Contract including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan submitted on the Application for Contractor Compensation Approval, DOE F 3220.5.

(6) Any proposed establishment of an incentive compensation plan.

(c) The Contractor shall provide the Contracting Officer with the following reports:

(1) 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) At the time of Contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.

(3) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.

Part I – Benefit Programs

The Contractor shall implement an employee benefits program that supports at a reasonable cost the effective recruitment and retention of highly skilled workforce at the Department facility. No presumption of allowability will exist when the Contractor implements changes to its existing employee benefits program until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program.

(a) Submit to the Contracting Officer for a determination of cost reimbursement a periodic evaluation of the Contractors Employee Benefits Program based on two professionally recognized performance measures:

(1) An Employee Benefits Value Study (ben-val) Measure every two years which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post-retirement benefits (PRB) other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources.

(2) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce (CoC) Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.

(b) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.

(c) When required by the Contracting Officer submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.

(d) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in paragraph (b) of this Part I.

(e) Post Retirement Life, Medical and Other Benefit Obligations Upon Contract Termination. Employer costs for retiree medical benefits will be prorated based only on service under this Contract.

(1) Subject to the availability of appropriated funds obligated to this Contract, if the Contract terminates, the Department of Energy will make available to the Contractor in a timely manner sufficient funds so that the Contractor has no out-of-pocket expenditures from corporate funds to cover all liabilities incurred under this Contract related to Contracting Officer-approved employee welfare benefit plans (including but not limited to medical, life, and workers' compensation). If so requested by the DOE at the time of Contract termination or expiration, the Contractor will continue as the sponsor of these plans until all liabilities of such plans are discharged.

(2) If the Contract terminates, the Department of Energy may make use of a third party such as an insurer to guarantee benefit payments.

Part II – Leave of Absence Without Pay

An employee may be granted a leave of absence without pay for up to three years by the Contractor provided the absence will not interfere with the Contractor's operations or create any conflict of interest. Continuation of benefits during leave of absence without pay will be administered according to the Contractor's leave of absence policy and any applicable Plan amendments as subject to ERISA.

(a) Granting of company service for a period of leave and restoration of vacation eligibility immediately upon return to work may be provided for employees who return to work from leaves including, but not limited to:

(1) Leaves granted when it is in the Government's interest to make an employee's expertise or services available to DOE, another DOE Contractor, another government agency (e.g. Department of Homeland Security, Department Of Defense, Centers for Disease Control, or National Aeronautics and Space Administration), colleges or universities, or other work-related activities such as the International Atomic Energy Agency.

(2) Entrepreneurial leave granted to accelerate technology start up based on DOE developed technologies.

(b) Continuation of company service credit and/or immediate restoration of vacation upon return to work for any leave without pay other than those listed above require DOE approval if the leave exceeds 180 days.

(c) The Contractor shall submit an annual report to the Contracting Officer identifying all employees on leave of absence without pay under this provision, the organization they are supporting, the location of assignment and length of leave of absence.

Part III Group Pension Plans

Staff members of the Contractor's Pacific Northwest National Laboratories (PNNL) assigned to or performing work under the Contract may participate in the Contractor's Group Pension Plans (the Plans) applicable to PNNL in accordance with the terms of the Plans. The Group Pension Plans are trusteed plans described in items (a) and (b) below and with respect to the Plans, the Contractor and DOE agree as follows:

(a) "Pension Plan of Pacific Northwest Laboratories, Battelle Memorial Institute," [PNNL Plan] (applicable to non-bargaining unit employees) effective July 1, 1987, and as the foregoing PNNL Plan may be amended from time to time by the Contractor's Board of Trustees; and as determined to be reimbursable by the DOE Contracting Officer.

(b) "Hanford Contractors Multi Employer Defined Benefit Pension Plan for HAMTC Represented Employees," [HAMTC Plan] (applicable to bargaining unit employees) effective April 1, 1987; and, as the foregoing HAMTC Plan may be amended from time to time by the Plan Administrator in cooperation with the Administrative Committee; as determined to be reimbursable by the DOE Contracting Officer.

(c) The PNNL Plan and disposition, payment and transfer of Plan assets shall satisfy the requirements of the Employee Retirement Income Security Act (ERISA), the Internal Revenue Service (IRS), and the Department of Labor and any other applicable Federal statutes and regulations.

(d) All costs related to the PNNL Plan required to meet the requirements of this Article including administrative costs incurred by the Contractor and applicable to the work under the Contract and employer contributions related to work performed under this Contract will be allowable costs. To the extent practicable all non-settler administrative costs shall be charged to the pension plan rather than to the operating budget to the maximum extent permitted by Department of Labor regulations. The employer contributions will be allowable at rates determined for PNNL based on actuarial valuations performed by the actuary appointed by Battelle, using the entry age normal cost method of funding.

(e) The Contractor will provide DOE with annual actuarial valuation reports and IRS Form 5500 Reports. These reports shall contain information regarding PNNL Plan assets and liabilities. Said information shall be based on the valuation assumptions and calculation methods which are then in use for the PNNL Plan. The actuarial valuation reports shall be provided to DOE within thirty (30) days after preparation or nine (9) months following the opening of a plan year for which funding requirements are calculated, whichever is earlier.

(f) Unless otherwise agreed, the Contractor will obtain an actuarial valuation of the PNNL Plan as of the effective date of Contract termination or expiration. The cost of such valuation will be allocated in accordance with then current procedures for allocating actuarial valuation costs.

(g) Procedures for Annual Accounting of Employer Pension Contributions for PNNL Plan

(1) For each plan year, the Contractor will provide to DOE an accounting of assets associated with employer pension contributions with respect to the Contract work of PNNL and the Non-Contract work of PNNL as follows:

(i) accrual basis market value of such associated assets at the beginning of the PNNL Plan year;

(ii) the dollar amount of employer pension contributions made during the plan year allocated, on the basis of the cost of non-bargaining direct staff labor during such year, to the Contract work and the Non-Contract work;

(iii) the dollar amount of investment income on such associated assets based on the yield rate determined on the dollar-weighted market value basis as shown in actuarial reports of the Plan;

(iv) the dollar amount of related benefits and/or assets disbursed to terminated and retired PNNL staff members and beneficiaries; such related benefits and/or assets will be allocated on the basis of the historical relationship of non-bargaining direct staff labor to the Contract work of PNNL staff members and the other work of PNNL staff members; and

(v) accrual basis market value of associated assets at the end of the plan year [(i) + (ii) + (iii) – (iv) = (v)].

(2) The first accounting under this PNNL Plan shall be as of June 30, 1987, and shall reflect the removal of those assets and liabilities transferred to the HAMTC Plan effective April 1, 1987, from total PNNL pension assets accounted for in previous reports covering the periods from January 1,

1965 on. For the Plan year ending June 30, 1987, and annually thereafter, the Contractor will provide to DOE an accounting of assets as described in Part III, paragraph (g)(1) above. Such reports shall be provided to DOE within thirty (30) days after preparation but no more than nine (9) months following the opening of the plan year for which funding requirements are calculated. The final accounting period shall end with the effective date of Contract termination.

(h) References to termination of the Contract in this Article are intended to cover the circumstances created when the contractual relationship between DOE and the Contractor is terminated in whole or in part by formal action of DOE in accordance with the Clause of the Contract entitled "Termination". It is not intended that the provisions of this Article pertaining to Contract termination be implemented in cases when reduced funding levels or cessation of individual projects or programs require work force reductions but do not affect the continuing contractual relationship under the Contract.

(i) Procedures for Determination of Contract Service Pension Assets and Liabilities Upon Contract Termination.

(1) Contract Service Assets. Contract Service Assets shall include all assets attributable to employer contributions with respect to the Contract work of PNNL, as determined in this Part III, paragraphs (g)(1) and (g)(2) above. Such assets shall also include applicable employer contributions due the fund but not paid as of the effective date of termination.

(2) Non-Contract Service Assets. Non-Contract Service Assets shall include all assets attributable to employer contributions with respect to the Non-Contract work of PNNL as determined in this Part III, paragraphs (g)(1) and (g)(2) above. Such assets shall also include applicable employer contributions due the fund but not paid as of the effective date of termination.

(3) Liabilities for Present and Future Benefits

(i) Pensioners, Beneficiaries, and Terminated Vested Members

The liability for benefits for PNNL pensioners, beneficiaries, and terminated vested members who separated prior to the date of Contract termination and whose separation was not directly caused by such termination, shall be equal to the present value of such benefits as of the effective date of termination of the Contract. Such present value shall be calculated using GATT rates for interest and mortality as appropriate for the PNNL Plan, consistent with the then current actuarial valuation, or as mutually agreeable to the DOE and the Contractor based on circumstances at the time.

(ii) Active Participants Retained by Battelle

For the active participants retained by Battelle, the past service liability shall be calculated as of the effective date of Contract termination using the PNNL Plan actuarial assumptions, actuarial cost method, and benefits as then in effect. The calculations shall be completed in a manner comparable to those for an ongoing plan.

(iii) Active Participants Not Retained by Battelle in the Event There Is No Successor Pension Plan

If there is no successor pension plan, liabilities for vested accrued benefits of PNNL Participants whose active membership is terminated as a result of Contract termination, including benefits becoming vested by reason of such termination under applicable PNNL Plan provisions, law and/or IRS regulations, shall be equal to the present value of such vested benefits calculated using the GATT rates for interest and mortality, as appropriate for the PNNL Plan consistent with the then current actuarial valuation, or as mutually agreeable to the DOE and the Contractor based on circumstances at the time.

(iv) Active Participants Not Retained by Battelle in the Event There is a Successor Pension Plan

For the Participants covered by a successor pension plan, the past service liability shall be calculated as of the effective date of Contract termination using the Plan actuarial assumptions, actuarial cost method, and benefits as then in effect. The calculations shall be completed in a manner comparable to those for an ongoing pension plan.

(j) Disposition of Contract Service Assets and Liabilities

(1) The liabilities and Contract Service Assets associated with such liabilities for pensioners, beneficiaries, and terminated vested members as described in this Part III, paragraph (i)(3)(i) shall be retained by Battelle and shall include an amount actuarially determined to cover reasonable administrative service costs provided, however, that if requested by DOE to do so, Battelle shall solicit proposals from at least three insurance carriers for a single premium purchase non-participating contract for assumption of liabilities for such participants. The award shall be based on mutual agreement between the DOE and the Contractor, and shall be consistent with fiduciary standards related to such transactions. In such

case, retained assets shall equal the cost of such insurance contracts.

(2) The remainder of Contract Service Assets, after the retention described in this Part III, paragraph (j)(1) above, shall be divided into two parts as follows:

(i) One part equals such remainder of Contract Service Assets multiplied by the ratio R / (R+S) where:

R = past service liability for active Participants retained by Battelle calculated as described in this Part III, paragraph (i)(3)(ii). And

S = past service liability for active Participants not retained by Battelle calculated as described in this Part III, Paragraph (i)(3)(iv).

This part of Contract Service Assets will be retained by Battelle.

(ii) The other part of Contract Service Assets equals the total of Contract Service Assets less the amount retained by Battelle under Part III, paragraph (j)(1) and paragraph (j)(2)(i) above.

(A) If there is a successor plan, then this part shall be transferred to, and associated liabilities calculated in accordance with this Part III, paragraph (i)(3)(iv) shall be assumed by, the successor plan.

(B) If there is no successor plan, then

1. this part and associated liabilities calculated in accordance with this Part III, paragraph (i)(3)(iii) will be retained by Battelle;

2. if such assets exceed the associated liabilities (including the option of purchasing annuities to cover the liabilities) and the PNNL Plan terminates, Battelle will pay to DOE from Plan assets any excess amount remaining after plan termination costs, penalties, and taxes resulting from such termination of the Plan; and

3. if Plan assets remaining after the costs, penalties and taxes resulting from termination of the Plan are not sufficient to cover the liabilities in accordance with this Part III, paragraph (i)(3)(iii) then DOE will pay to Battelle the deficiency; provided, however, payment

by DOE shall be subject to the availability of appropriated funds which may be used for such purposes.

(C) If there is no successor plan, then

1. this part and associated liabilities calculated in accordance with this Part III, paragraph (i)(3)(iii) will be retained by Battelle; and

2. if the PNNL Plan does not terminate, then DOE and Battelle shall meet to determine an equitable disposition of the PNNL Plan.

(k) Disposition of Non-Contract Service Assets and Liabilities

(1) The liabilities and Non-Contract Service Assets associated with such liabilities for pensioners, beneficiaries and terminated vested members as described in this Part III, paragraph (i)(3)(i) shall be retained by Battelle.

(2) The remainder of Non-Contract Service Assets, after the retention described in paragraph (k)(1) above, shall be divided into two parts as follows:

(i) One part equals such Non-Contract Service Assets multiplied by the ratio T / (T+W) where:

T = past service liability for active Participants retained by Battelle calculated as described in paragraph (i)(3)(ii); and

W = past service liability for active Participants not retained by Battelle calculated as described in paragraph (i)(3)(iv).

This part of Non-Contract Service Assets will be retained by Battelle.

(ii) The other part of Non-Contract Service Assets equals the total of Non-Contract Service Assets less the amount retained by Battelle under paragraph (k)(1) and paragraph (k)(2)(i) above.

(A) If there is a successor plan, then this part shall be transferred to, and associated liabilities calculated in accordance with paragraph (i)(3)(iv) shall be assumed by, the successor plan.

(B) If there is no successor plan, then this part and associated liabilities calculated in accordance with paragraph (i)(3)(iii) will be retained by Battelle. Any excess or shortage of Non-Contract Service Assets in relation to such liabilities will be retained or absorbed by Battelle.

(l) Financial Adjustments

(1) If within six (6) months after the termination of the Contract, a retained staff member of Battelle is transferred to the successor contractor, or a transferred staff member is returned to Battelle, adjustments will be made to Contract and Non-Contract Service Assets as if the transfer had been effective on the date of Contract termination, and appropriate payments or transfers of assets will be made.

(2) If at the end of twenty-four (24) months following Contract termination, the terminations of retained staff members during this period exceed the numbers expected in the actuarial assumptions of the Plan at Contract termination, liabilities for vested benefits of the excess terminated staff members will be calculated as the present value of benefits as of the date the staff member terminated; such present value shall be calculated using the GATT rates for interest and mortality, as appropriate for the PNNL Plan consistent with the then current actuarial valuation, or as mutually agreeable to the DOE and the Contractor based on circumstances at the time. This value will be substituted for the value previously established for the retained staff members; adjustments will be made to Contract and Non-Contract Assets; and appropriate payments or transfers of assets will be made.

(3) The procedures outlined above in paragraph (l)(2) shall also be applied to all staff members who transfer to a successor contractor; adjustments shall be made as above and appropriate payments will be made.

(m) Payments and Transfers of Assets

(1) Payments by either party for excesses or shortages of Contract Service Assets as described in paragraph (j)(2)(ii) shall be in U.S. currency and completed within thirty-six (36) months of the effective date of Contract termination or such longer period as may be mutually agreed upon. Both parties shall have the option of making payments in one lump sum or in any series of installments at a rate of return mutually agreeable to the parties.

(2) If transfers of Plan assets are made to a successor plan as described in paragraph (j)(2)(ii) and paragraph (k)(2)(ii) in the form of investment

holdings, such holdings shall include cash, equity securities, and fixed income securities. Such assets shall be allocated on a pro rata basis, with the prorating for fixed income assets based on rating and sector classification. Transfers shall include interest earnings on applicable assets from the effective date of termination to the date of transfer as calculated in paragraph (m)(1) above.

(3) Battelle will transfer Plan assets at a rate at least sufficient to meet the cash flow requirements of transferred staff members who go into benefit status after the effective date of Contract termination.

(n) The Contractor will take no unilateral action concerning the termination, merger, spin-off, or other action affecting the status of the Plan as covering only Non-Bargaining employees of the Pacific Northwest National Laboratory without the approval of the DOE. In the event of a Plan termination, the costs and disposition of Plan assets and liabilities shall be as set out in paragraphs (i) and (j) above, or as mutually agreeable to the DOE and the Contractor based on circumstances at the time.

(o) With respect to the Multi-Employer Pension Plan for HAMTC Represented Employees (Part III, paragraph (b) above), the Contractor and DOE agree that effective April 1, 1987, pursuant to a collective bargaining agreement, the Contractor became a participating employer in the Hanford Contractor Multi-Employer Pension Plan for HAMTC Represented Employees. All assets and liabilities of the "Employees Retirement Plan of Battelle Memorial Institute" were transferred to and merged with the said Multi-Employer Plan.

(p) Costs incurred by the Contractor for contributions required by the HAMTC Plan are allowable to the extent applicable to the work under the Contract.

(q) The HAMTC Plan fund, not the Contractor, shall be liable for costs incurred in the course of administration (actuary fees, reports, and similar expenses); provided, however, that costs for employee communications, sign up and termination, payroll, and similar expenses are allowable as normal operating expenses to the extent applicable to work under the Contract.

(r) Upon expiration or termination of the Contract, all liability of the Contractor with respect to the HAMTC Plan shall cease. The Contractor shall have no claim to any HAMTC Plan assets in excess of HAMTC Plan liabilities, nor shall the Contractor be required to fund any excess of HAMTC Plan liabilities over HAMTC Plan assets. DOE agrees that all costs, including cost of defense, from any withdrawal liability arising under federal law by reason of the Contractor's withdrawal from the Multi-Employer Plan shall be an allowable cost under the Contract subject to the provisions of paragraph (j) of the clause entitled "Payments and Advances".

(s) The Contractor will take no action concerning the termination, merger, spin-off, or other action affecting the status of the plan as covering only Bargaining Unit employees of the Pacific Northwest National Laboratory.

(t) With respect to all Plans, unless otherwise required by federal law or resulting from the collective bargaining process, no amendment to any of the Plans shall result in allowable costs under this Contract if the adoption date of such amendment is later than 12 months before the termination or expiration date of the Contract and the termination or expiration of the Contract is due to the act or failure to act of the Contractor, or the failure of the Contractor to bargain in good faith with the government for an extension of the Contract.

(u) The aggregate annual contribution to any Plan shall range from the minimum specified by Internal Revenue Code (IRC) Section 412(b) to the amount necessary to fully fund the year end expected current liability. However, the aggregate annual contribution to a Plan shall be no less than the minimum specified by IRC Section 412(b) nor greater than the tax-deductible limit specified by IRC Section 404.

Part IV – Group Savings Plans

The Contractor maintains or is a participating employer in savings plans for eligible non-bargaining employees. In addition, the Contractor is a participating employer in a multi-employer plan for bargaining unit employees. The savings plans are trusteed plans described in the following two documents entitled "Battelle Employees' Savings Plan", and "Hanford Contractors Multi-Employer Savings Plan for HAMTC Represented Employees". The plans must be established and maintained as qualified defined contribution plans under the regulations of the Internal Revenue Service. The Plan and Trust documents and any amendments thereto which effect substantive changes or increase costs are subject to the approval of the Contracting Officer. With respect to the Plans, the parties agree as follows:

(a) Costs of employer matching contributions incurred and accrued under the terms of the Plans are allowable to the extent applicable to Contract work. To the extent permitted by law or regulation, the Plans funds, not the Contractor, shall be liable for the costs of administration.

(b) The Contractor will provide the Contracting Officer with annual accounting reports within eight months after the close of a Plan year. A copy of IRS Form 5500, together with any supplemental or supporting documents submitted therewith, will be provided to DOE each year when prepared by the Contractor, which may be provided in lieu of the accounting report required by this provision.

(c) Employee forfeitures of accrued benefits shall be in accordance with the terms of the Plans and such forfeitures shall be used to reduce Contractor contributions

made on behalf of remaining participating employees.

(d) In the event of Contract expiration or termination, the Contractor, if requested by DOE to do so, will transfer assets and liabilities to a replacement contractor's plan.

(e) In the event of Plan terminations, vest immediately one hundred percent in the Plan participants' individual accounts.

(f) Upon expiration or termination of the Contract, all liability of the Contractor with respect to the Hanford Contractors Multi-Employer Savings Plan for HAMTC Represented Employees shall cease. DOE agrees that all costs, including cost of defense from any withdrawal liability arising under federal law by reason of the Contractor's withdrawal from the Multi-Employer Plan shall be an allowable cost under the Contract, subject to the provisions of paragraph (j) of the clause entitled "Payments and Advances".

(g) The Contractor will take no action concerning termination, merger, spin-off, or other action affecting the status of the Plans without the approval of the DOE.

(End of Clause)

H-31 RESERVED [M599]

H-32 Other Advance Understandings

(a) To facilitate continuity of performance and Contract administration, all agreements, memorandums of understanding, and contractual assumptions which have been appropriately agreed to in writing by both Parties prior to this Contract extension will continue in effect according to the terms thereof unless they have been superceded or, if they are in conflict with any other terms and conditions of this Contract extension.

(b) For purposes of the clause in this Contract titled "Access to and Ownership of Records, it is understood and agreed that the Contractor-owned legal records that are subject to an attorney-client privilege or an attorney-work-product privilege require special handling to preserve these privileges. Therefore, the Parties agree that inspection, copying, or audit of any such records will only be conducted by DOE Counsel or its designees.

[M600]

(End of Clause)

H-33 RESERVED [M543]

H-34 Electronic Subcontracting Reporting System (AL 2006-01)

The requirement for the ssubmittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The offeror's subcontracting plan shall include assurances that the offeror will (1) submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports at all tiers, in eSRS.

The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702. **[M432]**

(End of Clause)

H-35 Joint Global Climate Change Research Institute

The Department of Energy directive titled, "Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C., Area", or its successor, is not applicable to PNNL employees whose permanent duty station is at the Joint Global Climate Change Research Institute in College Park, Maryland, provided that those employees are performing or supporting research and development work. However, if at any time any of those employees are assigned to a position to provide technical expertise and/or experience in support of program missions, the Contractor must meet all of the applicable requirements of the above-mentioned directive or its successor for those employees. **[M881]**

(End of Clause)

H-36 Energy Efficiency In Energy Consuming Products

The Contractor will make its best effort to specify or deliver ENERGYSTAR® qualified products or products conforming to the Federal Energy Management Program's (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for ENERGYSTAR® at http://www.energystar.gov/products and FEMP at http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm
[M453]

H-37 Information Technology Acquisitions

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website http://checklists.nist.gov or approved secure configurations that

are commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions. **[M490]**

H-38 Special Provisions Relating to Work Funded under American Recovery and Reinvestment Act of 2009 (Apr 2009) (Applicable only to Recovery Act Work)

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

This clause must be included in every first-tier subcontract.

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. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source 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.

Note: For contractors currently using drawdown on a letter of credit, the current procedure remains in effect and is used for Recovery Act activity in lieu of invoicing.

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). 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 FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

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.

[A508]
(End of Clause)

H-39 H-39 Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification Under Public Law 85-804

A. The term "a risk defined in this contract as unusually hazardous or nuclear" as used in FAR Clause 52.250-1 means the risk of legal liability to third parties (including legal costs as defined in paragraph (jj) of section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2014(jj), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act, 42 U.S.C. §2010) arising from actions or inactions in the course of the following work performed by the Contractor under the Contract:

(1) Providing assistance in implementing physical security at nuclear and radiological facilities worldwide to ensure effective safeguards and security of weapons-usable nuclear materials and high-risk radiological materials both domestically and internationally under Department of Energy's (DOE) Global Threat Reduction Initiative (GTRI). Supporting activities shall include vulnerability assessments; design and installation of physical security systems; material consolidation; secure transportation; materials disposition and conversion to less attractive forms; implementation of detection and measurement technologies; and security operations training.

(2) Providing assistance in DOE's Material Protection Control and Accounting (MPC&A) program including cooperative work outside the United States on the design and implementation of MPC&A systems for facilities processing, handling, and storing nuclear materials, and the transportation of nuclear materials; provision of U.S.-manufactured equipment, and procurement of equipment for installation in facilities in order to implement the above systems; training in the design, use and assessment of MPC&A systems, export control, and facility transition support.

(3) Participation in the DOE/National Nuclear Security Administration program(s) focusing on the complete denuclearization of the Democratic People's Republic of Korea (DPRK), including cooperative work outside the United States on the disablement and dismantlement of all declared and undeclared DPRK nuclear facilities and the verification of activities, equipment, and materials at said facilities; inspection, packaging, removal, securing in place, transportation, storage and disposition of spent nuclear fuel, nuclear materials (including uranium, highly-enriched uranium, and plutonium), and other radiological materials and equipment; and the conversion of any reactors using highly-enriched uranium fuel to low-enriched uranium fuel.

(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 into the future. **[M764]**

(5) Other activities relating to nonproliferation, emergency response, anti-terrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage or disposal of nuclear, radiological, chemical, biological, or

explosive materials, facilities or devices, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary, and further provided that the request or approval specifically identifies a particular project involving one of those activities and makes the indemnity provided by this clause applicable to that particular project under the contract.

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. §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. §2210e) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the Contractor is exposed.

[M920]

H-40 Contractor Assurance System

(a) The Contractor shall develop a Contractor assurance system that is executed by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The Contractor assurance system, at a minimum, shall include the following key attributes:

(1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.

(2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.

(3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.

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

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

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

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

(8) Continuous feedback and performance improvement.

(9) An implementation plan (if needed) that considers and mitigates risks.

(10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

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

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

[M600]

H-41 Work Authorization

Prior to the issuance of a work authorization or direction concerning continuation of activities of the contract, the Contractor shall provide a detailed description of work, identification of hazards/risks and legacy considerations and controls that will be instituted to mitigate the hazards/risks and legacy considerations, a budget of estimated costs, and a schedule of performance for the work, and shall provide or make available those items through an approved approach or as directed by the Contracting Officer or designee. The "estimate" referred to in paragraph (e) of the clause entitled, "DEAR 970.5211-1, Work Authorization" shall be defined as total available funds, and standard monthly budget reports meet the notification requirements of this clause.

[M707]

H-42 Implementation of Section I Clauses

(a) For purposes of identifying the use of Alternates and Deviations to FAR and DEAR clauses, ***bold italic*** lettering will be used where the language contained within a FAR or DEAR clause is providing alternative language or a deviation to the affected clause.

(b) For purposes of implementation of Contract Clause I-9B, entitled "Personal Identity Verification of Contractor Personnel", the Parties agree to the following:

1) The agency personal identity verification procedures that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201 and that must be complied with, are the applicable DOE directives included in Appendix D, List of Applicable DOE Directives & External Requirements.

2) The Contractor shall only account for Government-provided identification issued through processes managed by the Contractor in connection with this Contract.

3) The Contractor shall return or disposition the Government-provided identification issued to Contractor employees in connection with HSPD-12 credentials in the manner approved by DOE.

(c) For purposes of implementation of Contract Clause I-56, entitled, "Government Supply Sources", the Parties agree that the applicable reference is to the "Property" clause in this Contract.

(d) For purposes of implementation of Contract Clause I-90, entitled, "Diversity Plan", the Parties agree to the following:

1) The Contractor has submitted a Diversity Plan to the Contracting Officer and the Contracting Officer has approved it.
2) The Contractor shall review its Diversity Plan annually and submit an update to its Diversity Plan as necessary, or upon request from the Contracting Officer.

(e) For purposes of implementation of Contract Clause I-100, entitled "Insurance-Litigation and Claims", the Parties agree that the term "contractor's managerial personnel" is defined in the "Property" Clause in this Contract.

(f) For purposes of implementation of Contract Clause I-104, entitled "Payments and Advances", the Parties agree to the following:

1) Monthly Provisional Fee Payments. The Contractor may withdraw against the payments cleared financing arrangement, up to one-twelfth (1/12) of 90% of the performance fee for the fiscal year, on the first day of each month, unless otherwise instructed in writing by the Contracting Officer.

2) Final Fee Payment. Following DOE's determination of Total Available Fee Amount Earned, the Contractor is authorized to withdraw any amount of earned fee over the amount previously paid on a provisional basis from the payments cleared financing arrangement. In the event DOE determines there

has been an overpayment to the Contractor, such overpayment plus interest shall be redeposited to the payments cleared financing arrangement within 30 calendar days, or otherwise used as directed by the Contracting Officer. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(g)For purposes of implementation of Contract Clause I-111, entitled "Federally Funded Research and Development Center Sponsoring Agreement", the Parties agree that the referenced clause only applies to work performed under this Contract and does not apply to work authorized in accordance with Contract Clause H-45, entitled "Battelle Memorial Institute Legacy Work".**[M881]**

(End of Clause)

[M779]

H-43 Sustainability Program

In accordance with Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy is committed to managing its facilities in an environmentally preferable and sustainable manner. In the performance of work under this contract, the Contractor shall endeavor to provide its services in a manner that will promote the natural environment and protect the health and well-being of Federal employees, contract service providers and visitors using the facility. The Contractor shall make reasonable efforts to specify or deliver environmentally preferable and sustainable products and services, recycled content products, bio-based products, energy efficient products, water efficient products, alternative fuels and vehicles, and non-ozone depleting substances consistent with the Contractor's Site Sustainability Plan and the Contractor's Environmental Management System.

The Site Sustainability Plan will identify the contributions toward meeting the Department's sustainability goals and will be updated annually based on annual guidance provided by the DOE Pacific Northwest Site Office. The Contractor will develop and implement an Environmental Management System that is certified to the International Organization for Standardization's 14001:2004 standard. The sustainability goals identified within the Contractor's Site Sustainability Plan will be integrated into the Contractor's Environmental Management System.

(End of Clause)

[M813]

H-44 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 five 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. **[M881]**

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.

[M842](End of Clause)

H-45 Battelle Memorial Institute Legacy Work

(a) Authority to Use DOE Facilities.

Contractor may utilize the Government-owned or leased facilities and property to complete previously awarded Projects as identified in Appendix I – List of Battelle Memorial Institute Legacy Work (Legacy Work), under the same terms and conditions as previously agreed to with Battelle clients, provided that such utilization is not incompatible with existing or planned DOE programs and that it does not substantially interfere with Contractor's performance of work under the Contract, or with the work of another DOE on-site operating contractor.

(b) Non-FFRDC Work

DOE and Battelle agree that work performed by Battelle under this Clause is performed neither on behalf of DOE nor as a part of PNNL in its status as a Federally Funded Research and Development Center or as a DOE national laboratory, but as a separate division of Battelle for its own account. DOE and Battelle also agree that the projects that are performed under this Clause are prohibited under the requirements for a Non-Federal Work for Others (NFWFO) Agreement or under "Clause H-44, Non-Federal Agreements for the Commercialization of Technology (PILOT)" unless otherwise permitted as described in the paragraph of this Clause that is entitled "Conversion to ACT or NFWFO."

(c) Term

The term of Legacy Work will continue in accordance with the list of Projects identified in Appendix I of the Contract. Each Project will have a defined end date and estimated cost of completion as specified in Appendix I and no additional funds or extensions to these Projects will be authorized without a modification to the Contract. Authority to use facilities for Legacy Work under this Clause will expire on or before September 30, 2015.

(d) Full Cost Recovery

For Contractor's activities conducted under authority of this Clause, the Contractor shall provide full-cost recovery, and shall indemnify the Government in accordance with Paragraph (h), Indemnification, of this Clause. 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 Department's Financial Management Handbook. 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.

(e) Effect of Termination

If, prior to its specified expiration date, the Contract is terminated in whole or in part, DOE will terminate this Clause in whole or in part at any time after the effective date of the termination of the Contract by giving Battelle 30 days written notice and, upon the date specified in such notice, this Clause shall terminate; provided, however, that for a period of one year following the effective date of the termination of the Contract or until the date on which the Contract would have expired had it not been terminated, whichever period of time is less, this Clause shall continue in effect as to those facilities and that property necessary for the performance of research and development Legacy Work in progress when the Contractor receives notice of the termination of the Contract; provided, further, that such continued use will not substantially interfere with the conduct of DOE programs.

In the event DOE selects a successor contractor to replace Battelle to manage and operate PNNL, Battelle will coordinate its access to DOE facilities and equipment on a non-interference basis with said successor contractor in order to complete work in progress or work for which Battelle has been committed prior to receiving notice of the termination of the Contract. An agreement between the successor contractor and Battelle will be required to perform any new work using DOE facilities and equipment.

(f) Nuclear Work

In cases involving nuclear-related work DOE may, but shall not be obligated to, extend Battelle's permission to use all or part of the facilities and property.

(g) Effect of Emergencies

In the event an emergency situation arises involving an on-site or off-site incident as hereinafter defined, which as determined by the Contracting Officer requires the utilization of the Government-owned facilities or property or of personnel then engaged in the conduct of activities for Battelle's own account, Battelle shall,

upon request of the Contracting Officer, cease all or any part of such activities during the duration of the emergency situation and shall make the facilities, property and personnel immediately available for such work as the Contracting Officer shall direct. The Government, DOE, their officers, employees or authorized representatives shall not be liable for any loss sustained by Battelle, its clients, or others directly or indirectly attributable to the cessation of activities requested under the authority of this Paragraph.

(h) Indemnification

The Contractor shall be liable for, and indemnify and hold harmless the DOE, its officers, agents, employees and persons acting on its behalf against liability and claims of any kind (including costs and expenses incurred) arising out of or relating to activities conducted under this Clause, or arising from any exercise of Contracting Officer's authority with regard to this Clause.

Contractor's liability and indemnification obligations under this Clause shall not apply to any injury, destruction, or death which results directly from the negligence of DOE, other DOE contractors, or the officers, employees or representatives of the DOE or other DOE contractors.

(i) Intellectual Property Considerations.

(1) Intellectual property conceived, first reduced to practice, authored or otherwise created under the projects listed in Appendix I (Legacy IP) will be owned and allocated in accordance with the terms and conditions of the agreements for such projects.

(2) The Contractor may in the exercise of its sole and independent discretion donate Legacy IP to the Government for commercialization under this Contract with the approval of the Contracting Officer. Once donated, the Legacy IP will be Subject Inventions and copyrightable data under this Contract and the Contractor's commercialization activities for the Legacy IP will be conducted in compliance with the following clauses that are included in this Contract: Technology Transfer Mission; Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor; and Rights in Data – Technology Transfer.

(j) Intellectual Property Indemnity.

The Contractor shall indemnify DOE, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of and relating to activities conducted under this Clause. 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.

(k) Damage to Government-owned and Leased Facilities and Equipment.

(1) Except for loss or destruction of, or damage to, Government-owned or leased facilities, equipment, or other property that are subject to this Clause and are caused by the willful misconduct or lack of good faith on the part of Contractor's managerial personnel, Contractor during the conduct of activities under this Clause shall not be liable for: (1) loss or destruction of, or damage to, such facilities, equipment, or property; and (2) expenses related to or incidental to such loss, destruction of, or damage to, such facilities and property, due to excepted perils as described in this Paragraph J. when such loss, destruction, or damage is caused by or arises out of any activity undertaken pursuant to this Clause; provided, that this waiver of liability shall be applicable only when the amount of such loss, destruction or damage caused by any of such excepted perils is in excess of $5,000,000 or such other amount as the Government and Contractor may agree upon from time-to-time.

(2) Excepted perils comprise fire; lightning; windstorm; cyclone; tornado; hail; explosion; riot attending a strike; civil commotion; vandalism and malicious mischief; nuclear incident; aircraft or objects falling therefrom; vehicles running on land or tracks (excluding vehicles owned or operated by Contractor or any agent or employee thereof operating in the course of the agency or employment); smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action by the military forces of the United States in resisting enemy attack.

(l) The clause in this Contract entitled "DEAR 970.5228-1 Insurance—Litigation and Claims" is not applicable to the Legacy Work performed under this clause. DOE is not responsible for any costs of litigation arising out of or relating to the Legacy Work performed under this Clause.

(m) Legacy Work Only

In no event will work other than that listed in Appendix I – List of Battelle Memorial Institute Legacy Work, dated October 15, 2012, be permitted under this Clause.

(n) Conversion to ACT or NFWFO

If any Project identified in Appendix I can be performed in compliance with Clause H-44 or under an NFWFO Agreement, the Contractor may submit a written request to the Contracting Officer that identifies the Project and a statement establishing the reasons why the Project may be performed in compliance with Clause H-44 or under an NFWFO Agreement. Contractor may perform the converted Project under Clause H-44 or under an NFWFO Agreement upon approval by the Contracting Officer. However, the Contractor

will continue to indemnify DOE in accordance with this Clause for Legacy Work approved for conversion to ACT or NFWFO. The IP terms of any such converted project will be subject to the terms and conditions of the applicable agreement arising under the H-44 Clause.

[M920]

(End of Clause)