PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SPECIAL CONTRACT REQUIREMENTS

CLAUSE H.1 - LABORATORY FACILITIES

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

(1) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the AMES Laboratory Site at AMES, Iowa; and Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

(2) Subject to DOE approval, other facilities may be used in the performance of the work under this contract. ISU agrees to provide necessary space in ISU-owned buildings in connection with work under this contract. Such space in ISU-owned building space shall be provided under reasonable terms and conditions to be negotiated on a federal fiscal year basis as a space rental rate (in lieu of rental for such space and occupancy) between the Parties in an amount not to exceed the rates it charges to other self-sustaining departments of ISU.

(i) The space rental rate discussed above shall include physical plant services normally provided by ISU with respect to the use and occupancy of said space. Said rate includes (i) utilities, (ii) renovations and alterations, and (iii) maintenance of said space and the equipment and facilities therein and appurtenances thereof in good repair to adequately provide for the health and safety of Laboratory employees and other individuals.

(ii) Space area shall be computed as the actual net area used directly, in connection with the work under the contract. Space shall be measured in the clear, excluding space occupied by walls and partitions. Only space used for a specific and direct purpose in connection with the work under the contract shall be included in the actual net area computation, thereby excluding from the computation certain available space used for corridors, washrooms, building equipment areas and similar areas except when such space is for specific and exclusive use in connection with work under the contract. In those instances where space will be occupied for use by ISU in carrying on its own activities as well as in connection with the work under the contract, the space used in connection with the work under the contract shall be prorated on the basis of estimated time usage for work under the contract.

(iii) Prior to each fiscal year during the term of this contract, the Contractor shall submit to DOE for its approval a proposal of the estimated total square feet of ISU-owned space which the Contractor contemplates will be used in carrying on the work under the contract during the ensuing fiscal year. Provisional reimbursement, based upon the agreed upon space rental rate, shall be made at the end of each month. Following the close of the fiscal year, ISU shall submit its request for reimbursement in accordance with sub-section iv.below, and prompt adjustment shall be made for any difference between the amount paid to ISU on a provisional basis and the actual amount due.

(iv) Claims for reimbursement under this section will be presented promptly at the close of the fiscal year and shall be itemized to show actual space used by room or other identifiable location, net useable area of room, percentage of ISU work use and time, actual net area used for the contract work, the use of the space, and the name of the Group Leader directing the particular phase of the work under the contract in each specific location. In addition, the Laboratory Director shall certify (i) to the accuracy of the prorated distribution of space, (ii) that the space for which payment is requested under this section was required for performance of the work under contract, and (iii) that such space was actually used directly in connection with the work under contract. ISU and the Contractor shall maintain adequate records to support any requests submitted for payment under this section.

(3) DOE agrees to use its best efforts to provide ISU with access to space and specialized facilities at AMES Laboratory, to the extent consistent with DOE programs and policies under reasonable terms and conditions to be negotiated by the Parties.

(4) In the event that a subsequent contract is competitively awarded to a new Contractor for the management and operation of the AMES Laboratory, ISU will use its best efforts to continue to provide necessary space described in section 2 above during the term of the successor contract. Such space shall be provided under reasonable terms and conditions negotiated by the Parties. Likewise, DOE agrees to use its best efforts to provide ISU with access to space and specialized facilities at AMES Laboratory, to the extent consistent with DOE programs and policies and under reasonable terms and conditions to be negotiated by the Parties.

(5) ISU and DOE have developed mutually satisfactory agreements for the lease or the use and occupancy of real property in connection with the work under this contract. ISU agrees to continue to furnish and make

available, for use in performance of this contract, certain ISU-owned land, buildings, utilities, equipment, and other facilities situated at the ISU AMES, Iowa campus and environs. DOE reserves the right to make part of the above-mentioned Government-leased land or Government-owned facilities available to other Government agencies or other users on the condition 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.

(6) Upon receipt of written notice by DOE that any Government-owned building is no longer required by the Government, ISU shall maintain same in a standby status, as directed by DOE, through the Contractor, until such time as said Government-owned building is purchased by ISU, leased, or sold to a third party, or removed by the Government, or until such time as ISU is notified in writing by DOE that such maintenance in a standby status is no longer required. ISU shall be reimbursed through this contract for all direct costs incurred under this section for providing this service, subject to the availability of funds for that purpose. Said maintenance by ISU shall be subject to availability of appropriations.

(7) Upon receipt of written notice from DOE that any Government-owned building is no longer required by the Government, ISU shall have, for a period of not less than one hundred and eighty calendar days from receipt thereof, the exclusive option to purchase all the right, title and interest in and to said building for such reasonable amount as may be mutually agreed upon by the Government and ISU. In the event ISU elects to exercise said option, it has agreed to serve written notice of this intent upon DOE within the 180-day period, or such other time as may be mutually agreed upon. At that point, the Government and ISU will proceed to conclude negotiations with reasonable promptness. In the event ISU fails to exercise its option as discussed herein, the Government may dispose of the building by sale, lease, removal, or otherwise; provided, however, that the sale or lease of the building by the Government to a third party is subject to approval of ISU insofar as intended use of the building by the prospective purchaser or lessee is concerned.

(b) Access to DOE Leased Facilities. The Parties understand that the AMES facilities are sited on ISU and are subject to certain constraints arising out of the fact that ISU owns the land and surrounding area(s).

(1) The DOE facilities sited on ISU property are subject to one or another of various leases, a utility easement, and other agreements. (See Section J., Attachment J.5., Appendix E; and, Contract No. W-7405-ENG-82, Attachment J.12, Appendix L1 and L.2.). The Government-owned buildings on ISU-owned property are covered by Land Lease Agreements Nos. DE-RL02-76CH00144 (Maintenance Buildings), DE-RL02-

76CH00145 (Metals Development Building), DE-RL02-76CH00146 (Harley Wilhelm Hall) and DE-RL02-76CH00148 (Spedding Hall and Technical Administrative Services Facility). The water line easement to the maintenance buildings is covered by Easement No. DE-RL02-76CH00149. During the term of this contract, as it may be extended, or any other period during which any Government-owned building is being used by the Government or by others under arrangement with the Government, these leases and utility easement shall be read and applied as if ISU was the Contractor under this contract.

(2) If DOE and the Contractor should agree on the construction with funds provided by DOE and on property owned by ISU of any permanent building or buildings for use in performing work under this contract, ISU will grant to the Government a ninety-nine (99) year lease or leases on the property on which the building or buildings will be situated together with reasonable surrounding area, such lease or leases to be covered by separate agreement between ISU and the Government, and to be subject to the approval of the Executive Council of the State of Iowa. The Government and its agents and representatives, and such others as DOE may approve shall have the right of free ingress and egress to and from all parts of leased property for the duration of the lease thereto.

(3) Upon expiration of the term of this contract, as same may have been extended, or upon prior termination, the Government may without additional charge, continue to have necessary access to and continued use of any Government-owned building for the performance of work by Government employees or by others; provided, however, that said building will not be put to use by the Government or by others authorized by the Government which creates or constitutes a nuisance or prejudices the operation of state educational facilities adjacent thereto.

(c) Utilities and Other Services. During the term of this contract, as it may be extended, or any other period during which any Government-owned building is being used by the Government or by others under arrangement with the Government, ISU, subject to the approval of DOE, will make available all necessary utilities for the proper operations of said Government-owned buildings at AMES and will maintain, or arrange to maintain, said utilities (including extensions from ISU-owned utility distribution facilities that are connected to the Government-owned building), the Government-owned buildings and the equipment and facilities therein and appurtenances thereof, and the leased property in good repair and in safe condition, as directed by DOE. For the purpose of this clause, all extensions, which are or have been financed by Government funds and whether or not situated on property leased from ISU, from ISU-owned or other utility distribution facilities that are connected to any Government-owned building shall be considered part of the Government-owned building.

(d) Disposition of Property Altered or Constructed on Premises Not Covered by Long-Term Lease Arrangements. Effective on July 1, 1953, it is understood and agreed that prior to any construction, improvement or alteration of any structure or other improvement on ISU property which is not covered by a long-term lease, pursuant to section (b)1 above and which is financed in whole or in part by Government funds under this contract, the Government and ISU shall agree in writing as to the approximate allocation of costs as between the Government and ISU and the method of disposition of such construction, improvement or alteration. The plans for any construction, improvement or alteration under this section shall be purely utilitarian and without unnecessary refinements. Except as otherwise may be provided in such agreements, it is understood and agreed that DOE shall be under no obligation to restore the premises affected by any such construction, improvement or alteration made to or upon such property of ISU in the course of work under the contract. Such agreements shall be executed by representatives of the Parties authorized to sign such an agreement. The requirements of this section apply to work to be performed by the Contractor as well as that to be performed by third parties.

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

(a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.

(b) Institutional/Business planning. It is the intent of the Parties to develop an Institutional/Business Plan covering a five-year period, which will be updated at least annually. Development of the Institutional/Business Plan is a component of the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the period covered by the plan. The Institutional/Business Plan approved by the DOE Site Office Manager provides guidance to the Contractor for long-range planning of Laboratory programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.

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

CLAUSE H.3 - WORK PROGRAMS

(a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this Contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this Contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.

(b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.

(c) (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE’s overall program goals, scientific and technological problems, and its current long range objectives. In light of such information, the Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.

(2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.

(3) The Contractor shall prepare a final work program and budget consistent with DOE’s overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.

(d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program

Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:

(1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.

(2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two fiscal years, together with a revised budget estimate for the current fiscal year.

(3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.

(e) (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the clauses of the Contract entitled “Changes” and “Work Authorization”.

(2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds available for work under the Contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries, and

Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.

(3) Additional programs and projects to be conducted at the Laboratory within the scope of the Contract may be established by agreement between the DOE and the Contractor. However, nothing herein shall preclude DOE from directing a change in or assignment of work pursuant to the "Changes" or the "Work Authorization" clauses of the contract.

(f) A Contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further Contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the Contract. DOE agrees to use its best efforts to provide stable funding in support of the Contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.

(g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.

(h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract. However, nothing herein shall preclude DOE from directing a change in or assignment of work pursuant to the "Changes" or the "Work Authorization" clauses of the contract.

(i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this Contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

CLAUSE H.4 - <u>DEFENSE AND INDEMNIFICATION OF EMPLOYEES</u>

(a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this Contract. Except for defense costs made unallowable by Section I clause entitled Payments and Advances, or the Major Fraud Act (41 U.S.C. §256(k)), the

costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I clause entitled Insurance–Litigation and Claims.

(b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.

(c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.

(d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor's counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

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

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

(a) ITEMS OF ALLOWABLE COSTS:

(1) Cost for the defense and indemnification of employees in accordance with the provisions of Clause H.4.

(2) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer as set forth in Part III, Attachment J.7, Appendix G.

(3) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.

(4) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

(5) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.

(b) ITEMS OF UNALLOWABLE COSTS:

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

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

CLAUSE H.6 – FACILITIES CAPITAL COST OF MONEY

The request for proposal for this contract did not require a cost proposal in which facilities capital cost of money would apply. Therefore, the Clause I.27, FAR 52.215-17, Waiver of Facilities Capital Cost of Money is included in the contract. However, if during the performance of the contract the Contractor elects to claim facilities capital cost of

money as an allowable cost, the Contractor shall submit, for approval of the Contracting Officer, a proposal for each specific project, including Form CASB-CMF which shows the calculation of the proposed amount (see FAR 31.205-10).

CLAUSE H.7 - ADMINISTRATION OF SUBCONTRACTS

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

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

(c) The DOE reserves the right to identify specific work activities in Section C "Description/Specifications/Work Statement" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at $5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by Contractor employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at $5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by Contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.

(d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with the clause of this contract entitled, “Changes”. A “material change” for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the fee base contained in Part 1, Clause B.3 (e)(2). To the extent that DOE assigns the administration of a contract to the

Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor's annual available performance fee. The negotiation of fee will be in accordance with the contract clause entitled, "Total Available Base Fee Amount and Performance Fee Award". The Parties will also negotiate appropriate adjustments to the Contractor's Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor's subcontracting base and goals.

CLAUSE H.8 - PRIVACY ACT RECORDS

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

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

Personnel Radiation Exposure Records (DOE-35) respecting Contractor Employees, DOE Employees, and Visitors to the Contract site.

Employee and Visitor Access Control Records (DOE-51)

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

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

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

CLAUSE H.9 - ADDITIONAL DEFINITIONS

(a) "CH" means the DOE Office of Science, Chicago Office.

(b) "Contractor" means the Offeror as specified in Block 15A of Standard Form 33 for Contract No. DE-AC02-07CH11358.

(c) The term “DOE” means the Department of Energy, “FERC” means the Federal Energy Regulatory Commission, and “NNSA” means the National Nuclear Security Administration.

(d) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.

(e) “Head of Agency” means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.

(f) ”Laboratory” means the AMES Laboratory (AMES) consisting of all Government-owned property, facilities, and structures, as well as Government-leased land and other items of property as the Parties may mutually agree, in writing, from the time to time (hereinafter referred to as the “Laboratory Site”) at AMES, Iowa.

(g) The term "someone acting as the Laboratory Director" means the person appointed as Laboratory Director; Deputy Laboratory Director(s) acting in the absence of the Laboratory Director; or a person specified, in writing, to have authority to act in the absence of the Laboratory Director and Deputy Laboratory Director(s).

(h) The term “non-profit organization” means –

(1) a university or other institution of higher education,

(2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,

(3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or

(4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.

(i) The term “Senior Procurement Executive” means, for DOE:

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

(2) National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and

(3) Federal Energy Regulatory Commission – Chairman, FERC.

CLAUSE H.10 - SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with Clause I.154 – DEAR 970.5244-1 – CONTRACTOR PURCHASING SYSTEM, subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A "Notice of Intention to Make a Service Contract" and forward it to the Contracting Officer or his designee to obtain a wage determination.

CLAUSE H.11 - WALSH-HEALY PUBLIC CONTRACTS ACT

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

CLAUSE H.12 - 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 performance goals, objectives, measures, and targets, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management

of the Laboratory.

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

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

(4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the DOE AMES Site Office Manager.

(5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Science, through the DOE AMES Site Office Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.

(6) The Contracting Officer shall annually provide a written assessment of the Laboratory’s performance to the Contractor, which shall be based upon the process described in Appendix B. The Parties acknowledge that the performance levels achieved against the specific performance goals, objectives, measures, and targets shall be the primary, but not sole, criteria for determining the Contractor’s final performance evaluation and rating. The Contractor’s self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor’s performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix B that is deemed to have an impact (either positive or negative) on the Contractor’s performance. Other

relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent – or no – review of the functional area. Conversely, marginal performance or "for cause" situations may result in more frequent reviews.

(b) Standards of performance measure review:

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

(2) Failure to include a goal, objective, measure, or target in the contract Appendix B does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.

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

CLAUSE H.13 - <u>CAP ON LIABILITY</u>

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

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

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

(3) 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.

(b) The Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor’s act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor’s act or failure to act overlaps more than one fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor’s act or failure to act occurred. If the Contractor’s cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

CLAUSE H.14 - INTELLECTUAL AND SCIENTIFIC FREEDOM

(a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to important national interests.

(b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of the scientific, engineering, and technical work performed by Laboratory personnel.

(c) In order to further the goals of the Laboratory and the national interest, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open debate and in scientific, educational, or professional meetings or conferences, subject to the limitations included in technology transfer agreements and such other limitations as may be required by the terms of this Contract, including, but not limited to the clause of this Contract entitled, “Security.” Nothing in this clause is intended to alter the obligations of the Parties to protect classified or unclassified controlled nuclear information as provided by law.

(d) Nothing in the Section I clause entitled "Public Affairs" or the Section H clause respecting “Lobbying Restriction” are intended to limit the rights of the Contractor or its employees to publicize and to accurately state the results of its scientific research.

CLAUSE H.15 - NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

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

CLAUSE H.16 - APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS

(a) Performance. The Contractor will perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as “Appendix I, List B” until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.

(b) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.

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

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

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

(1) deny application of the proposed alternative;

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

(3) approve the proposed alternative; or

(4) provide a date by which a decision will be made (not to exceed an additional 60 days).

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

(g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Appendix I or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within thirty (30) calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted by the Contractor within the thirty (30) calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Appendix I. The Contractor and the Contractor Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.

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

CLAUSE H.17 - EXTERNAL REGULATION

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Laboratory facilities, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, and/or State and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs

simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

CLAUSE H.18 – CONTRACTOR CORPORATE STRUCTURE AND PERFORMANCE GUARANTEE

(a) Since AMES is a Federally Funded Research and Development Center (FFRDC), Federal Acquisition Regulation (FAR) 35.017 requires the Contractor to manage and operate AMES as an autonomous organization or as an identifiable separate operating unit of the parent organization. While the Contractor must satisfy the FAR 35.017 requirement, the Contractor is not required to form a separate corporate entity to do so.

(b) If, however, the Contractor forms a separate corporate entity from its parent organization(s) to perform the work under this Contract, the separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

(1) The Contractor's parent organization(s) or all member organizations, shall guarantee the Contractor's performance as evidenced by the Performance Guarantee(s) incorporated in the contract in Section J, Attachment J.12, Appendix L. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the contract.

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

CLAUSE H.18A – RESPONSIBLE CORPORATE OFFICIAL

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

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

Name:	Steven Leath
Position:	President
Organization:	Iowa State University of Science and Technology
Address:	1750 Beardshear Hall, Ames, Iowa 50011-2038
Phone Number:	515-294-2042

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

CLAUSE H.19 – EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Total Compensation System

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

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

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

(b) Reports and Information

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

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

(2) A list of the top five most highly compensated executives as defined in

FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the Central Contractor Registration (CCR) per FAR 52.204-10.

(3) The Compensation and Benefits Report no later than March 1 of each year.

(c) Pay and Benefit Programs

The Contractor shall maintain pay and benefit programs for its Employees. Employee eligibility for benefits is subject to the terms, conditions, and limitations of each benefit program.

(1) Cash Compensation

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

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

(ii) An Annual Compensation Increase Plan (CIP). The Compensation Increase Plan (CIP) for a Contractor that has received Contracting Officer approval for having an Employee Compensation Program with the components identified under (a)(1) above should include the following components and data:

(1) Market analysis summary, including a comparison of average pay to market average pay.

(2) Merit Fund requests for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt).

(3) Aging factors used for escalating survey data.

(4) Projection of escalation in the market.

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

(6) Analysis to support special adjustments or promotions that exceed the 1% Promotion/Adjustment fund authorized under Section III (b) (4) of Appendix A.

(7) Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts.

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

(9) Information to support a request for variable pay authorization.

(10) (a) Reimbursed salary levels are used to establish the annual CIP fund.

(b) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.

(c) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.

(d) Specific Employee or Payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the contractor and the Contracting Officer.

(e) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

(f) The Contractor may make minor shifts of merit funds between employment categories (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) after approval of the CIP in order to meet the compensation requirements of its organization, subject to the following guidelines:

- Minor shift is defined as up to 10% of the approved merit funds from one employment category to another (e.g, 10% of Admin merit funds shifted to Technician employment category)
- Total merit increase expenditures will be limited to the total merit fund approved.

- Contractors will notify the Contracting Officer that funds have been shifted.

(iii) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel not included in the CIP. For those key personnel included in the CIP, DOE will approve salaries upon the initial contract award and when key personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously indicated).

(B) The Contracting Officer's approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel as indicated in (c)(1)(A)(iii) above. The Contractor shall not be reimbursed for the top contractor official's incentive compensation. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract when compared to subordinate compensation, which would include base salary and any potential incentive compensation under an incentive compensation agreement. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

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

(i) Voluntarily separates, resigns or retires from employment, (unless associated with a workforce restructuring action in accordance with Appendix A, Section XII, Reductions in Contractor Employment)

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

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

(iv) Is discharged for cause.

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

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

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

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

(3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison Method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.

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

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

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

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

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

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

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

(9) Each contractor sponsoring a Defined Benefit pension plan and/or postretirement benefit plan will participate when required in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan and participating in a conference call to discuss the contractor submission.

Ames Lab employees may exercise rights under Iowa State law to choose membership in the Iowa Public Employee’s Retirement System (IPERS).

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

(e) <u>Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs</u>

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

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

the Contracting Officer, Commingled Plans may be converted to separate plans at the time of new contract award or the extension of a contract.

(f) Basic Requirements

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

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

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

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

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

(g) Reporting Requirements for Designated Contracts as Applicable

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

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

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

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

(h) Changes to Pension Plans

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

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

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

(B) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;

(C) the Summary Plan Description; and,

(D) any such additional information as requested by the Contracting Officer.

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

(A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,

(B) provide the dollar estimate of savings or costs, and

(C) provide the basis of determining the estimated savings or cost.

(i) Terminating Plans

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

(j) Special Programs

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

(k) Definitions

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

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

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

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

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

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

CLAUSE H.19A – LABOR RELATIONS

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

(b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any site-specific pension or other benefit plans.

(c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.

(d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

(e) The Contractor shall provide copies of collective bargaining agreements to the Contracting Officer as they are ratified or modified.

CLAUSE H.19B – POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

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

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

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

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

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

(2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor’s costs will be reimbursed pursuant to applicable Contract provisions.

CLAUSE H.20 - CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

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

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

CLAUSE H.21 - ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

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

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

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

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

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

CLAUSE H.22 - WORKERS' COMPENSATION

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

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

(c) Contractors approve all workers compensation settlement claims up to $100,000. Settlement claims above the $100,000 require Contracting Officer notification.

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

CLAUSE H.23 - ADDITIONAL LABOR REQUIREMENTS

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

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

CLAUSE H.24 - PERFORMANCE BASED MANAGEMENT AND OVERSIGHT

(a) Performance-based management shall be the key enabling mechanism for establishing the DOE-Contractor expectations on oversight and accountability. DOE expectations (outside of individual program performance and requirements of laws and regulations) and performance targets shall be established through the Performance Evaluation and Measurement Plan (PEMP) pursuant to the clause entitled “Standards of Contractor Performance Evaluation”. This PEMP shall establish the expected strategic results in the areas of mission accomplishment, stewardship and operational excellence. Mission performance goals shall be established by agreement with each major customer of the Laboratory, and customer evaluation will be the primary means of evaluating mission performance. Stewardship and operational goals shall be established by agreement with DOE. Contractor self-assessment, third party certification, and Contractor and DOE independent oversight, as appropriate, shall be the primary means for assessing stewardship and operational performance. Routine DOE oversight of Contractor performance will be conducted at the systems level.

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

(c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external

regulators in assessing Contract compliance. DOE oversight will be achieved through periodic assessments at the management system level, including review of Contractor self-assessments and assessments by independent third parties.

CLAUSE H.25 - LOBBYING RESTRICTION (CONSOLIDATED APPROPRIATIONS ACTION, 2016)

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

CLAUSE H.26 – ELECTRONIC SUBCONTRACTING REPORTING SYSTEM

The requirement for the submittal 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 is 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.

CLAUSE H.27 - DISPOSAL OF REAL PROPERTY

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

CLAUSE H.28 — SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

(a) DOE shall make arrangements to execute a new Special Financial Institution Account Agreement with Bankers Trust Company, N.A. of Des Moines, Iowa which will be effective through January 31, 2007 and will be provided to the Contractor for its execution. Upon execution by the Contractor, said agreement shall supersede the existing Appendix C attached to this contract and shall be substituted therefore without any further action of the parties.

(b) Contractor agrees to procure, in accordance with DOE requirements, a Special Financial Institution Account Agreement in sufficient time to have said Agreement in place and effective as of February 1, 2007.

CLAUSE H.29 – AGREEMENTS AND COMMITMENTS

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

See Section J, List of Documents, Exhibits and Other Attachments.

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

See Section J, List of Documents, Exhibits and Other Attachments.

If the Contractor fails to provide any or all of these resources or to make progress toward providing these resources, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of the Section I clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts, Alternate I."

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

CLAUSE H.30 – 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 on October 31, 2017, unless renewed by the Contracting Officer. The Government may provide the Contractor with written notice to terminate Contractor's authority to conduct work under this Clause at any time. If the Contractor's authority to conduct work under this Clause has expired or been terminated, the Contractor may be permitted, subject to any other provisions of this Clause, to complete any work that was DOE approved work at the time Contractor's authority to conduct work under this Clause was terminated by the Government.

(13) *Successor Contractor.*

(a) To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor contractor of the Facility, ACT Agreement(s) executed under this Clause and any contractual instruments associated therewith may be novated to the successor contractor with the mutual consent of the Contractor, the successor contractor, and the parties to the affected ACT Agreement(s). If the ACT Agreement(s) cannot be novated, then the Contractor as a private sponsor shall be permitted to enter into a Non-Federal Work for Others agreement with the successor contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE WFO policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT Agreement.

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

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

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

(c) If the Contractor has not satisfied the criteria of Subparagraph b. to this Paragraph, then the Contractor and Contracting Officer, with input from the DOE Patent Counsel providing oversight to the Facility shall, prior to expiration or termination of the Contract, enter into negotiations to

determine an equitable distribution of rights in the affected ACT IP. Such negotiations shall consider the equities of the parties with respect to each piece of intellectual property including, at a minimum, the private expenditures made by the Contractor for patenting, marketing, licensing, and maturing the ACT IP up to the date of Contract expiration or termination; which party is best positioned to appropriately commercialize the ACT IP; and any other equities that may apply under the circumstances.

(14) *Minimum Reporting Requirements for ACT Activities*. During the ACT PILOT, the Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but not limited to the number of ACT agreements, the amount of funds reimbursed to DOE for work under ACT, the number of private sector entities engaged through ACT that had not previously engaged the Laboratory and the number that had not previously engaged any DOE/NNSA laboratory, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for laboratory engagement. Also during the PILOT, the Contractor shall report the above-identified data semiannually to DOE and in such a format which will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this Contract. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

CLAUSE H.31 – MODIFICATION AUTHORITY

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

(a) Accept nonconforming work,

(b) Waive any requirement of this contract, or

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

CLAUSE H.32 – 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 paragraph (a) above.

(c) In the case 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 Associated for Assessment and Accreditation of Laboratory Animal Care (AAALAC) International, or (iii) has a DOE Assurance Plan Number.

CLAUSE H.33 – PROTECTION OF HUMAN SUBJECTS

Before undertaking the performance of any research involving the use of human subjects, the provisions of 10 CFR 745, Protection of Human Subjects, must be complied with. This requirement applies to research undertaken with DOE support, work for others, and collaborations with other institutions.

CLAUSE H.34 - FEE

This contract includes both a base fee amount and a performance fee amount. The base fee amount encompasses the costs that, under preceding M&O contracts for the operation of Ames Laboratory, were considered allowable costs based upon the Iowa State University Facilities and Administrative cost rate that is part of the University's approved HHS F&A Cost Rate Following OMB Circular A-21. The components of the base fee under this current contract are as follows:

COMPONENTS OF THE BASE FEE

- Payroll processing
- Tax reporting
- Cash disbursement processing
- Internal audit advisory services
- Human resources classification and compensation plans
- Human resources applicant tracking and hiring system
- Human resources employee relations and problem resolution
- Negotiation and administration of employee benefit plans
- Employee visa administration
- Equal opportunity and diversity monitoring

- Labor law compliance monitoring
- Administrative policy development and monitoring
- Executive leadership and institutional oversight
- Research compliance services
- Promotion and tenure oversight
- Access to Ethicspoint compliance hotline
- Risk management services
- Environmental Health & Safety advisory services
- Information Technology advisory services
- Facilities Planning & Management advisory services
- Police services
- Access to the Parks Library
- Access to university Learning & Development opportunities for staff
- Access to programs at the Women's Center
- Access to university service providers at university on-campus rates
- Access to reduced staff rates for the recreation center, performing arts and athletics tickets

AMES and its staff will be able to access these programs and services on the same basis as other University departments and staff. Since the costs for these services and programs, listed as components of the base fee, are encompassed by and paid as base fee, they will not be otherwise charged to the contract as either a direct or indirect cost. No additional home office or corporate oversight expenses will be charged.

CLAUSE H.35- CONTRACTOR'S PRIVATELY FUNDED TECHNOLOGY TRANSFER ACTIVITIES

(a) Royalty Sharing with Inventors. The Contractor will share royalties collected on subject inventions which were elected and prosecuted under privately funded technology transfer with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10. Such royalty sharing shall be in accordance with paragraph (h) of DEAR 970.5227-3, Technology Transfer Mission.

(b) Royalty Use. After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year shall be used by the Contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility with no less than 51 percent of the balance of such royalties or income earned

and retained by the Contractor being used at the facility. If the balance exceeds five percent, 15 percent of the excess above five percent shall be paid by the Contractor to the Treasury of the United States and the remaining 85 percent shall be used by the Contractor only for the same purposes as described above. Royalties received by the Contractor which are required to be used at the facility shall be used in accordance with paragraph (h) of DEAR 970.5227-3, Technology Transfer Mission.

(c) Transfer of Patent Rights to a Successor Contractor. At the termination or expiration of this Contract, the following terms and conditions shall apply to subject inventions which were elected and prosecuted under privately funded technology transfer, licenses and royalties generated therefrom:

(1) For any license executed prior to termination or expiration of this Contract for a subject invention, the distribution of net royalties or income therefrom shall remain as prior to Contract termination or expiration and shall continue for the duration of such license. The percentage of such royalties or income being used at the facility 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.

(2) For any assignment executed to a party other than an affiliate of the Contractor prior to termination or expiration of this Contract for a subject invention, the distribution of net royalties or income therefrom shall remain as prior to contract termination or expiration and shall continue for the duration of such assignment. The percentage of royalties or income being used at the facility 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.

(3) Where title to a subject invention has been retained by the Contractor or an affiliate of the Contractor, the Contractor and Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to the invention by the Contractor or its affiliate or transfer of such title to DOE or the successor contractor operator at the facility. 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, potential commercial use, assumption of patent related liabilities, effective technology transfer and the need to market the technology. Regardless of whether such negotiations are completed, the Government shall have the right to require the transfer of any such title to any subject invention to which title has been retained by the Contractor or an affiliate and the Parties shall thereafter complete negotiations regarding appropriate compensation.

(4) Where title to a subject invention is to be retained by the Contractor or its affiliate subsequent to termination or expiration of the Contract, the Contractor and the Government shall enter negotiations prior to such termination or expiration with respect to net royalties or income generated from assignments or licenses of such inventions effected subsequent to termination or expiration of the Contract and the distribution thereof between the Contractor and a successor contractor at the facility for use at the facility pursuant to its contract, in the absence of a successor contractor then to such other entity designated by the Government. Such negotiations shall consider the equities of the parties and other conditions as set forth in paragraph (3) above. However, the net royalty or income distribution to the facility for use by a successor contractor or other Government designated entity shall in no event be less than twenty-five percent (25%) of such net royalties or income.

(d) Costs. Except as otherwise specified in DEAR 970.5227-3, Technology Transfer Mission and DEAR 970.3102-05-30, Patent costs and technology transfer costs, 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, including costs relating to litigation or other adverse claims, where the Contractor elects to retain title as part of his privately funded technology transfer activities.

(e) Liability of the Government. In situations involving privately funded technology transfer activities, the Contractor shall include in all license agreements and in any assignment the following clause unless otherwise approved or directed by the Contracting Officer following consultation with DOE Patent Counsel:

"This license (assignment) is entered into by the Licensor, independent from its Prime Contract with the Department of Energy. The Licensor is acting independently from the Government and in its own private capacity and is not acting on behalf of the U.S. Government, nor as its contractor nor its agent. Correspondingly, it is understood and agreed that the U.S. Government is not a party to this license 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 license agreement, the subject matter licensed, or any action or lack thereof by the Licensor or Licensee with respect thereto."

Further, 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.

CLAUSE H.36- 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 at http://checklists.nist.gov commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions."

CLAUSE H.37 – CONTRACTOR'S OBLIGATIONS REGARDING DATA FIRST PRODUCED UNDER DOE FUNDING OPPORTUNITY ANNOUNCEMENT DE-FOA-0000472 (ARPA-E REACT FOA)

(a) Rights to Protected Data

(1) The Contractor may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance **DOE/ARPA-E Work Proposal No. 0472-1526, also referred to herein as the Field Work Proposal(FWP),** (issued pursuant to the identified ARPA-E REACT FOA) that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (b) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under **DOE/ARPA-E Work Proposal No. 0472-1526** with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until 5 years after the data is produced, without the express written authorization from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part. (End of notice).

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

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

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

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

(a) At the end of the protected period;

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

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

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

(4) However, the Contractor agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this FWP without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data.

- **performance data: hydrogen/nitrogen uptake, crystal structure lattice constants, magnetic properties (Curie temperatures, saturation magnetizations, anisotropies**

- **A non-proprietary graphic which communicates the overall research concept.**

(5) The Government's sole obligation with respect to any protected data developed under the identified FWP shall be as set forth in this clause.

(b) Unauthorized Marking of Data

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

CLAUSE H.37A – CONTRACTOR'S OBLIGATIONS REGARDING DATA FIRST PRODUCED UNDER DOE FUNDING OPPORTUNITY ANNOUNCEMENT DE-FOA-0000687 (CRITICAL MATERIALS HUB)

(a) Rights to Protected Data

(1) The Contractor may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of a DOE Work Proposal (FWP) or Inter-entity Work Order (IWO), issued pursuant to the identified Critical Materials Hub FOA (identified FOA) that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (b) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under a Field Work Proposal and/or Inter-entity Work Order issued pursuant to Department of Energy Funding Opportunity Announcement DE-FOA-0000687: Critical Materials Hub and may not be published, disseminated, or disclosed to others outside the Government until 5 years after the data is produced, without the express written authorization from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights[1] in this data. This Notice shall be marked on any reproduction of this data, in whole or in part. (End of notice).

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

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

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

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

[1] "Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(a) At the end of the protected period;

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

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

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

(4) However, the Contractor agrees that the following types of data are not considered to be protected and shall be provided to the Government without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with the identified FOA, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data.

- Fundamental knowledge of critical materials properties
- General information regarding strategy and general overview of projects by or for the Hub directed to reducing or eliminating criticality for existing materials and preventing criticality of new materials that are essential to modern and advanced energy technologies
- Identification of and potential function and use of critical materials essential to modern and advanced energy technologies

(5) The Contractor may include this Rights to Protected Data clause, suitably modified to identify the parties, in all subcontracts to any Field Work Proposal and/or Inter-entity Work Order issued pursuant to Department of Energy Funding Opportunity Announcement DE-FOA-0000687: Critical Materials Hub

(6) The Government's sole obligation with respect to any protected data developed under an FWP or IWO issued pursuant to the identified FOA shall be as set forth in this clause.

(b) Unauthorized Marking of Data

(1) Notwithstanding any other provisions concerning inspection or

acceptance, if any data developed under an FWP or IWO issued pursuant to the identified FOA bears any restrictive or limiting markings not authorized by this clause, the Contracting Officer has the right to remove, cancel, correct, or ignore any markings not authorized by this clause on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

CLAUSE H.38 - RISK MANAGEMENT AND INSURANCE PROGRAMS

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

1. BASIC REQUIREMENTS

a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.

b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).

c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.

d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.

e. The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.

f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.

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

(1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

(2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.

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

(4) Accounting of self-insurance charges.

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

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

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

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

(d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.

h. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

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

2. PLAN EXPERIENCE REPORTING. The Contractor shall:

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

(1) The amount paid for each claim.

(2) The amount reserved for each claim.

(3) The direct expenses related to each claim.

(4) A summary for the year showing total number of claims.

(5) A total amount for claims paid.

(6) A total amount reserved for claims.

(7) The total amount of direct expenses.

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

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

3. TERMINATING OPERATIONS. The Contractor shall:

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

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

c. reach agreement with DOE on the handling and settlement of self insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION. The Contractor shall:

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

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

CLAUSE H. 39 - CONTRACTOR ASSURANCE SYSTEM

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

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

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

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

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

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

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

(7) Metrics and targets to assess performance, including benchmarking of key

functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.

(8) Continuous feedback and performance improvement.

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

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

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

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

CLAUSE H. 40 – CONFERENCE MANAGEMENT

The Contractor agrees that:

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

b) Determination of a Conference.

1) Definition. "Conference" is defined in the Federal Travel Regulation as, " [a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term ' conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404. However, this definition is only a starting point. What constitutes a conference for the purpose of this guidance is a fact-based determination based on an evaluation of the criteria established in this attachment.

2) Additional Indicia of Conferences. Conferences subject to this guidance are also often referred to by names other than “conference.” Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indications of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as

conferences without meeting all of the indicia listed above, but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.

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

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

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

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

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

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

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

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

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

i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or
ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

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

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

e) The Contactor will provide information on conferences they plan to sponsor with expected costs exceeding $100,000 in the Department's Conference Management Tool, including:

1) Conference title, description, and date;
2) Location and venue;
3) Description of any unusual expenses (e.g., promotional items);
4) Description of contracting procedures used (e.g., competition for space/support);
5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees); and
6) Number of attendees.

f) The Contractor will not expend funds on the proposed Contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the Contracting Officer.

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

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

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

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

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

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

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

1) Track all conference expenses; and

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

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

j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than $10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If the Contractor does so, its expenditures for the conference may be deemed unallowable.

k) Site requested clarifications: The procedures set forth above do not apply to:

1. A meeting between two entities in closed door discussions (one-on-one meetings)

2. A traveler is asked to give an invited talk at a seminar not open to the public, assuming there is no registration fee associated with the event.

CLAUSE H. 41 – <u>PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS</u>

The Contractor agrees that:

a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to

(1) classified information,

(2) communications to Congress,

(3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or

(4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. "

b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

CLAUSE H.42 - MULTIFACTOR AUTHENTICATION FOR CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

The Contractor shall take actions to achieve multifactor authentication (MFA) for standard and privileged user accounts of all classified and unclassified networks by September 30, 2016. Any delays that are due to DOE's failure to provide adequate Government Furnished Equipment in a timely manner will be taken into account in assessing the accomplishment of this requirements.