PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 No Third Party Beneficiaries (DOE-H-2002, Oct 2014)

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H.2 Reserved

H.3 Employee Compensation: Pay and Benefits (DOE-H-2001, Jun 2022)

(a) Contractor Employee Compensation Plan

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

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

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

(b) Total Compensation System

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

(c) Reports and Information

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

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

(2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(1)(i) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation no later than March 1st of each year.

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

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

(d) Pay and Benefit Programs

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

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

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

(B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Alliance for Sustainable Energy, LLC. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.

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

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

(3) Cash Compensation

(A) The Contractor shall submit the below information, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

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

(ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.

(iii) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:

- The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed one (1) percent in total.
- The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
- Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
- Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allowability will exist for employee job classes that exceed market position.

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

(1) Comparison of average pay to market average pay.
(2) Information regarding surveys used for comparison.
(3) Aging factors used for escalating survey data and supporting information.
(4) Projection of escalation in the market and supporting information.
(5) Information to support proposed structure adjustments, if any.
(6) Analysis to support special adjustments.
(7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
(8) A discussion of the impact of budget and business constraints on the CIP amount.
(9) Comparison of pay to relevant factors other than market average pay.

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

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

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

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

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

(e) Pension and Other Benefit Programs

(1) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval benefit changes that result in increases to the Department's long-term pension and other actuarial liabilities that are reported in the Department's financial statement and increases in other benefits such as paid time off, insurance, and employer contributions for defined contribution pension plans. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions. Any changes made by the Contractor shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

(2) The "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below, are methodologies designed to assist the Contracting Officer in contract administration and oversight. As an alternative to Employee Benefits Cost Survey Comparison, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or from DOE's independent public accounting firm (under contract with DOE), in accordance with subparagraph (n) to assist in determining whether costs are reasonable, allowable, allocable, and in accordance with the terms of the contract.

(3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15

comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.

(A) The Ben-Val, every 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 the Contracting Officer approved comparator companies. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

(B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor’s employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor’s Bureau of Labor Statistics or other Contracting Officer approved broad based national survey. Alternatively, in accordance with subparagraph (n) the Contracting Officer may obtain an audit of the Contractor’s compensation and benefits system and of its incurred costs from either DCAA or from DOE’s independent public accounting firm (under contract with DOE), and not require the submission of an Employee Benefits Cost Study.

(4) When the net benefit value exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.

(5) When the benefit costs as a percent of payroll exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.

(6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.

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

(8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be

based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

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

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

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

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

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

(g) Basic Requirements

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

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

(2) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting officer. In

years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

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

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

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

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

(6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

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

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

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

(i) Reporting Requirements for Designated Contracts

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

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

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

(j) Changes to Pension and PRB Plans

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

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

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

(2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see (e)(1) above). The justification must:

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

(k) Terminating Operations

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

(1) No further benefits for service shall accrue.

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

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

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

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

(l) Terminating Plans

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

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

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

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

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

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

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

(m) Special Programs

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

(n) Alternate Contractor Human Resource Requirements

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

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

(o) Definitions

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

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

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

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

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

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

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

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

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

H.4 Post Contract Responsibilities for Pension and Other Benefit Programs (DOE-H-2004, Oct 2014)

(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 the National Renewable Energy 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.

H.5 Labor Relations (DOE-H-2028, Oct 2014)

(a) The Contractor shall respect the right of employees to organize, form, join, or assist labor organizations; bargain collectively through their chosen labor representatives; 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 negotiation of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.

(c) The Contractor shall seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships, consistent with the requirements of FAR, Subpart 22.1, Basic Labor Policies and all applicable Federal and state labor relations laws.

(d) The Contractor shall 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 shall furnish such additional information as may be required from time to time by the Contracting Officer.

H.6 Environment, Safety, and Health Stop Work Order

(a) Notwithstanding the Clause I.103, *Technical Direction* and Clause F.3, *FAR 52.242-15 Stop-Work Order (Alternate 1),* and in addition to the Contracting Officer's stop-work authority in Clause I.119, *Integration of Environment, Safety, and Health into Work Planning and Execution* paragraph (g), Contracting Officer Representatives (CORs) are authorized to issue a Stop-Work Order when, in the judgment of the COR, a clear and present danger exists to the workers, environment or members of the public. Clear and present danger is a condition or hazard which could cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures.

(b) ES&H Stop-Work Orders under this clause may be initiated verbally by CORs. The Contractor is obligated to immediately comply with the COR verbal and/or written direction to Stop Work under this paragraph. Any verbal direction to the Contractor shall be followed in writing from the COR initiating the Stop-Work Order through the Contracting Officer as soon as reasonably possible. Work may not be restarted by the Contractor without written approval from the Contracting Officer.

(c) The Contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

H.7 Costs Associated With Whistleblower Action

(a) Costs Associated with Whistleblower Actions

(1) Definitions for purposes of this paragraph:

Covered contractors and subcontractors mean those contractors and subcontractors with contracts exceeding $5,000,000.

Employee Whistleblower action means an action filed by an employee in federal or state court for redress of a retaliatory act by a contractor and any administrative procedure initiated by an employee under 29 CFR Part 24, 48 CFR Subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239

Retaliatory act means a discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected as a whistleblower activity by a Federal or state statute or regulation.

Settlement and award costs mean defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement for a complainant employee's legal counsel.

(2) For costs associated with employees whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the Contracting Officer:

(i) May authorize reimbursement of costs on a provisional basis, in appropriate cases;

(ii) Must consult with the Office of General Counsel, whistleblower cost point of contact, who will consult with other Headquarters points of contact as appropriate, before making a final allowability determination; and

(iii) Must determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant facts and circumstances, including federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.

(3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.

(4) If a Contracting Officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

H.8 Separate Corporate Entity and Performance Guarantee

(a) The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

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

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

H.9 Responsible Corporate Official

Notwithstanding the provisions of clause H.8, Separate Corporate Entity and Performance Guarantee, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual contact.

Name: Mark Peters, Ph.D.
(Offeror Complete)

Position: Chair, Board of Directors

Company: Alliance for Sustainable Energy, LLC

Address: 15013 Denver West Parkway
PO Box 4011
Golden, CO 80402-0000

H.10 Alternative Disputes Resolution (DOE-H-2033, Oct 2014)

(a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.

(b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of alternate dispute resolution (ADR) in accordance with the clause at FAR 52.233-1, Disputes. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision, but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible in evidence in any subsequent litigation proceedings.

(c) Either party may request that the ADR process be used. The Contractor shall make a written request to the Contracting Officer, and the Contracting Officer shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed upon process.

(d) ADR procedures may be used at any time that the Contracting Officer has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a Contracting Officer's final decision under the clause at FAR 52.233-1, Disputes, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the Contracting Officer's final decision and does not constitute reconsideration of the final decision.

(e) If the Contracting Officer rejects the Contractor's request for ADR proceedings, the Contracting Officer shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the Contracting Officer's request to use ADR procedures, the Contractor shall provide the Contracting Officer with the reasons for rejecting the request.

H.11 Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties (DOE-H-2014, Oct 2014)

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

(b) After providing DOE advance written notice, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fine and penalties. However, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without first obtaining written approval from the CO. Failure to obtain advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

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

H.12 Long-Range Planning, Program Development and Budgetary Administration

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

(b) *Strategic planning* – The Contractor shall develop an Annual Laboratory Plan which 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 NREL Annual Laboratory Plan, approved by the Contracting Officer, provides guidance to the Contractor for its long-range planning that includes a core capability strategy, major science and technology initiatives and the Laboratory Directed Research and Development (LDRD) portfolio plan and articulates strategies for partnerships, talent management, infrastructure and campus development and controlling cost of doing business; 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.

H.13 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 use a comprehensive performance- based management approach for overall Laboratory management. The performance-based management approach will include the use of performance goals, and objective and subjective performance objectives, and notable outcomes approved in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the research, development, demonstration and commercialization and deployment mission and operations obligations under this Contract will be assessed. All performance measures and planned performance targets will be linked to the Annual Plan and other controlling documents, such as the program AOPs. The performance goals, objectives, and notable outcomes are contained in Part III, Section J, Attachment J - *Performance Evaluation and Measurement Plan* (PEMP).

(2) The Parties agree to use the process in the PEMP to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Attachment J 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 primary means of determining its compliance with the Contract Statement of Work and performance metrics identified within Part III, Section J, Attachment J. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organizations, as appropriate, in the self- assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement. The Contractor will inform the Contracting Officer of planned assessments and provide the Contracting Officer copies of these assessments upon completion. The Contractor will also provide the Contracting Officer copies of any corrective action plans developed in response to these assessments.

(4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Part III, Section J, Attachment J. The Contractor shall submit a formal self-evaluation report to the DOE at year-end and provide, as requested by the Contracting Officer, a formal status briefing at mid-year and/or year-end. Specific due dates and formats for the above-mentioned briefings and reports shall be determined by the Contracting Officer. In addition, the year-end report must provide:

(i) An overall summary of performance for each performance goal;

(ii) Rating for each performance objective and measure supporting the performance goal, against the agreed to performance target;

(iii) A summary of key strengths and opportunities for improvement for each performance objective and measure.

(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.

(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 Part III, Section J, Attachment J. The Parties acknowledge that the performance levels achieved against the specific performance goals and objectives 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 that 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 goals and objectives established within Attachment J that is deemed to have an impact (either positive or negative) on the Contractor’s performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., OIG, GAO, DCAA, etc.) conducted throughout the year, annual reviews (if needed), and DOE “for cause” reviews. Contractor success in meeting or exceeding performance expectations in a

particular management or operations functional area may result in 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, and notable outcomes) contained in Part III, Section J, Attachment J 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, and notable outcomes, for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, or notables, and/or to modify and/or delete existing goals, objectives, or notables. It is expected that the overall PEMP framework (goals and objectives) will remain largely unchanged year-to-year, and the DOE Contracting Officer will use notable outcomes 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, or notable in the contract Part III, Section J, Attachment J 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.

H.14 Reserved

H.15 Cost Recovery

If, at any time during the performance of the Contract, the Contracting Officer disallows a cost(s) in accordance with FAR 42.8, the Contractor must repay the amount owed within 15 days of the Contracting Officer's final written determination disallowing the costs. (In accordance with the clause at FAR52.242-1, this determination will occur approximately 120 days after initial notice to the Contractor of disallowance.) If the Contractor fails to repay the disallowed amount within the allotted time, the Contracting Officer may offset fee payments to recover the amount owed.

H.16 Lobbying Restriction (DOE-H-2076, Nov 2018)

In accordance with 18 U.S.C. § 1913, 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. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.17 Conditional Payment of Fee Process

If the Fee Determining Official (FDO) or designee determines that Contractor's performance does not meet the minimum requirements identified in paragraphs (a) through (d) of Clause I.115, *Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate 1*), the FDO or designee may make a unilateral decision to reduce the evaluation period's otherwise earned fee. If the FDO or designee elects to exercise this authority, the FDO or designee shall issue, through the Contracting Officer, a preliminary notice that includes rationale for such action and identifies specific deficiencies in the Contractor's performance. Upon notification, the Contractor shall have 14-days to provide the FDO or designee information it believes is relevant to the situation for FDO or designee consideration. The FDO or designee shall issue a final determination after the 14-day period has elapsed.

H.18 Application of DOE Contractor Requirements Documents

(a) *Performanc*e – The Contractor will perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this Contract as Section J, Attachment F (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 Order*s – The clause does not preclude the use of deviation processes provided for in existing DOE Directives.

(d) *Proposal of Alternative* – The Director of the National Renewable Energy Laboratory 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 official 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 Office* – 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 sixty (60) days).

(f) *Implementation and Evaluation of Performance* – Upon approval in accordance with (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 Contractor's designated official, 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 Attachment F List B 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 proposal shall be in accordance with the process set out in paragraph (e) and (f). 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 Attachment F. The Contractor and Contracting Officer shall identify and, if appropriate, agree to any changes to other Contract terms and conditions, including cost and schedule, resulting from the addition of the 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, at his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency including the reinstatement of the CRD.

H.19 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.150, *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

H.20 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 there under 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."

H.21 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.

H.22 Electronic Subcontracting Reporting System

The requirement for the submittal 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 to be accomplished by the electronic submittal of data under the Electronic Subcontract Reporting System (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.

H.23 Reserved

H.24 Reserved

H.25 Reserved

H.26 Organizational Conflicts Of Interest, Management Plan and Implementation Program

The Contractor's Organizational Conflicts of Interest Management Plan and Implementation Program (OCI Plan) are incorporated herein. The Contractor will consistently follow the Contractor's Organizational Conflicts of Interest Management Plan and Implementation Program. Changes to the Contractor's OCI Plan must be specifically approved by the Contracting Officer and may be proposed by either the Government or the Contractor. The Contractor agrees to negotiate with the Contracting Officer as to which changes are made. Such changes will be applied prospectively and not retrospectively to this Contract.

H.27 Counterintelligence Implementation

Consistent with Clause I.109, 970.5204-1, *Counterintelligence* of this Contract, the Contractor shall take all reasonable precautions in the work under this Contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes. To meet these requirements the Contractor will comply with DOE 475.1 Counterintelligence Program. All other provisions of Clause I.109, 970.5204-1 *Counterintelligence* shall be implemented.

H.28 Reserved

H.29 DEAR 952.219-70 DOE Mentor-Protégé Program (May 2000)

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. The contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact DOE's Office of Small and Disadvantaged Business Utilization.

H.30 Reserved

H.31 Exemption of Management and Operation Contractual Obligations for Real Property Encumbered by Government's Easement Outgrant

(a) On October 29, 2007 the Government granted to SunE SRI NREL, LLC (Grantee) an Easement Outgrant for the Installation and Operation of a Solar Electric Generating System at NREL.

(b) Such Easement Outgrant transferred rights and responsibilities to Grantee for the management and operation of that certain real property located on and adjacent to NREL, generally described as a tract of land in the Southwest Quarter (SW ¼) of Section Thirty Six, Township Three South, Range Seventy West of the 6th Principal Meridian, Jefferson County, Colorado, and more particularly described in Exhibit A of the October 29, 2007 Easement Outgrant for Installation and Operation of a Solar Electric Generating System at NREL (hereafter "Mesa Top Solar Electric Generating System Easement Property").

(c) Pursuant to such Easement, Grantee is obligated to manage and operate such Mesa Top Solar Electric Generating System Easement Property in accordance with the highest safety, health, environmental, and operational standards, including but not limited to: (i) environment, safety, and health management; (ii) site access, access control, and security; (iii) management and disposal of fuels, hazardous or toxic materials, and wastes; (iv) property protection; (v) insurance against risks and liabilities with Contractor and the Government identified as additional insured; and (vi) to the extent arising out of Grantee's negligence or willful misconduct, indemnification of Contractor and the Government from and against any and all losses incurred to the extent arising from or out of any claim for personal injury, including death, or loss or damage to property or any claim for infringement of patents or improper use of other proprietary rights.

(d) Consistent with the transfer of management and operation rights and responsibilities by the Government to the Grantee under such Easement, the Contractor is exempt from obligations for any and all contractual management and operation rights and responsibilities for the Mesa Top Solar Electric Generating System Easement Property.

H.32 Reserved

H.33 Provisional Payment of Fee

(a) The Contractor may draw up to one-twelfth (1/12) of 90% of the available fee for the fiscal year on the first day of each month, unless otherwise directed in writing by the Contracting Officer. The draw-down of fee is not to be construed as an evaluation of performance under clause DEAR 970.5215-1, "Total Available Fee: Base Fee Amount and Performance Fee Amount."

(b) Should DOE's evaluation of Contractor performance at the end of the fiscal year yield an earned fee less than the amount already drawn down by the Contractor, the Contractor agrees to repay the difference with interest calculated in accordance with DEAR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount.

H.34 Temporary Laboratory Closures at NREL

(a) From time to time it may become necessary to temporarily close the laboratory or a portion there of for imminent safety or security reasons. When such a condition exists, the NREL Laboratory Director (or designee) shall immediately inform the Golden Field Office (GFO) Director (or designee) of the decision to close the Laboratory or portion thereof and provide GFO Director with the rationale and need for such closure.

(b) There may be other conditions in which a laboratory closure is appropriate and needed. In such cases, the Laboratory Director will contact the GFO Director stating the need and rationale for the closure. With the concurrence of the GFO Director, the Laboratory Director shall be authorized to make such closure.

H.35 Reserved

H.36 Use of Force by Protective Force Personnel

(a) Subject to the approval/ratification, in writing, of the Contracting Officer, reasonable litigation and other legal expenses (including reasonable counsel fees and the premium for bail bond) if incurred in accordance with the clause of the contract entitled " Insurance – Litigation and Claims" and the DOE approved legal management procedures (including cost guidelines) as such procedures may be revised from time to time and if not otherwise made unallowable in this contract including FAR 31.205-47(f)(7):

(1) Necessary to defend adequately any member of the Contractor's internal guard force against whom a civil or criminal action is brought, where such action is based on lawful act or acts of the guard undertaken by him in the general course of his duties for the purpose of accomplishing and fulfilling the official duties of his employment; or

DOE and the Contractor have further agreed to the following in connection with the interpretation and administration of the foregoing provision:

Any request for approval/ratification must include a determination by the Contractor that: (i) the guard's action giving rise to the civil or criminal action reasonably appear to have been performed within the scope of his employment, and (ii) that it is in the best interest of the Government/Laboratory to pay for the guard's litigation expenses. DOE and the Contractor further agree that interpreting the term "lawful", due consideration shall be given to whether a member of the Contractor's internal guard force acted in good faith and reasonably believed that action to be in the general scope of his employment to accomplish official duties and, in addition, in criminal actions, had no reasonable cause to believe that his conduct was unlawful. In the event the Contractor is legally obligated to defend the guard, the termination of any civil action or proceeding by judgment or settlement shall not in and of itself create a presumption that any such guard did not act in good faith for a purpose where he reasonably believed to be within his scope of employment and official duties. Similarly, the termination of any criminal action or proceeding of conviction or upon a plea of nolo contendere, or its equivalent, shall create a rebuttable presumption that such guard did not have reasonable cause to believe that his or her conduct was lawful.

Finally, in connection with any federal criminal proceeding against a member of the Contractor's internal guard force, the Contractor recognizes that Contracting Officer approval of the allowability of litigation expenses will be further predicated on the Contracting Officer determining that such reimbursement is in the best interests of the United States.

H.37 Privately-Funded Technology Transfer

Commented [WN1]: Per Joe: This whole section talks about the base period of the contract (2008-2013). Does anything in here need to be updated to reflect 2013-2028?

(a) Contractor's Commitment

(1) For the Contractor's privately-funded technology transfer (PFTT) effort during the 5-year Base Period of this Contract, the Contractor shall commit on behalf of itself and others, a minimum of one million seven hundred fifty thousand ($1,750,000) of private (i.e., non-Federal) monies for expenses including but not limited to those related to patenting, marketing, licensing, technology maturation and development of Subject Inventions prior to the Contract expiration date of October 1, 2013.

(2) The Contractor shall indicate whether a Subject Invention will be pursued under its PFTT program within six (6) months after the Subject Invention is reported to DOE by the Contractor, unless an extension is otherwise agreed to in writing by the DOE field Patent Counsel. The Contractor is free to elect any or all Subject Invention(s) into the PFTT program or to remove Subject Inventions at its discretion subject to the provisions of the M&O contract and this clause. DOE may choose whether to accept title or transfer to the GFTT program, if offered by the Contractor, to Subject Inventions or software that are removed from the PFTT program. In addition:

i. Subject Inventions (including continuations, requests for continued examination, divisional applications, continuations in part, reissue applications and foreign counterparts) reported to DOE by the Contractor during the six (6) month period before Alliance assumed management and operating responsibilities (i.e., October 1, 2008) of Prime Contract No. DE-AC36-08GO28308 up to the effective date of this

Modification will be eligible for election as described in subparagraph (2) above and commercialization pursuant to the PFTT program. Election into Contractor's PFTT Program pursuant to this paragraph (i) shall end six (6) months after the effective date of this Modification

ii. Subject Inventions (including continuations, requests for continued examination, divisional applications, continuations in part, reissue applications and foreign counterparts) reported to DOE prior to April 1, 2008, or not elected into Contractor's PFTT Program pursuant to (i) above, which are not included in an executed license, assignment or other commercialization agreement (hereinafter "Agreement"), may be added to the PFTT program at any time provided that Contractor complies with all of the conditions set forth in this Paragraph (a), provided further that the Contractor reimburses the Government or the Laboratory overhead account, at the discretion of the Contracting Officer, for such Subject Inventions. Such reimbursement shall be $1,000 per Subject Invention that has not been filed in the U.S. or any foreign Patent Office, $2,000 for a provisional application, $15,000 per issued U.S. patent and $8,000 per issued foreign counterpart issued patent. The reimbursement for pending U.S. and foreign patent applications shall be reduced by a factor of 30% of the scheduled reimbursement of their respective U.S. and foreign counterpart issued patents. No refund of fees paid will be made for Subject Inventions added to the PFTT program by the Contractor should those inventions be eliminated from the program at a later date. In addition , if the Contractor has previously taken credit for third party contributions against Contractor's commitment of $1.75 million with respect to Subject Inventions subsequently returned to the GFTT program, Contractor shall eliminate such contribution from its commitment calculation.

iii. Any Subject Invention (including continuations, requests for continued examination, divisional applications, continuations in part, reissue applications and foreign counterparts) included in an Agreement may be added to the PFTT program at any time provided that it does not interfere with the GFTT program and the Contractor commits to a maturation/development investment in such Subject Invention equal to the amount of Federal funds previously expended on the documented external patenting costs of the Subject Invention, and provided further that Contractor complies with all of the conditions set forth in this subparagraph (2). In the absence of substantiating cost documentation the commitment shall be as earlier set forth in subparagraph (a)(2)(ii), above.

iv. For every Subject Invention that the Contractor adds to the PFTT program the Contractor must notify the Contracting Officer and provide a concise statement of its strategy and proposed milestones for commercialization of the invention for information purposes only. The Contractor will summarize its PFTT program and provide semi-annual status updates, including milestones, for each Subject Invention (excluding any proprietary and/or business confidential information) elected into the program against its commercialization strategy.

v. For every Subject Invention that the Contractor wishes to add to the PFTT program pursuant to (ii) or (iii) above, it will provide a justification as to why the Subject Invention should be permitted to be added to the PFTT program (e.g., bundling IP will facilitate commercialization; new technology combined with older, shelved technology will allow the older technology to be commercialized; inclusion in PFTT will not adversely affect the GFTT program, DOE mission, or NREL as an institution, etc.). Additions of Subject Inventions to the Contractor's PFTT program pursuant to (ii) or (iii) above shall be subject to the DOE Contracting Officer's approval, in concurrence with the DOE Field Patent Counsel.

(b) Transfer of Patent Rights to a Successor Contractor

As consideration for the Contractor's commitment to expend private monies in its privately-funded technology transfer (PFTT) effort under this Contract, including but not limited to expenses related to patenting, marketing, licensing, technology maturation, and development of Subject Inventions, the Parties agree that at the termination or expiration of this Contract, the following terms and conditions shall apply to Subject Inventions that were elected to be pursued under the Contractor's privately-funded technology transfer program, and to the licenses and royalties generated therefrom:

(1) If Contractor has in place an Agreement (as defined in paragraph (a) above), at the time it receives notice from DOE that the Department expects to terminate or allow this Contract to expire, title to such Subject Inventions (and/or software to which DOE has approved assertion of statutory copyright) and the distribution of gross income from royalties, equity, or any other consideration received or to be received under such agreement shall remain as prior to such notice of Contract termination or expiration and shall continue for the duration of such agreement. Administration of agreements related to such Subject Inventions shall remain with the Contractor. If the Contracting Officer finds that Contractor has not substantially complied with each of the commitments under this clause relating to each individual Subject Invention at the time of such notice, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or such other entity designated by the Government. For the purpose of clarification and in the event the Contractor receives notice from DOE that DOE expects to terminate this Contract before the end of the Base Period, then effective as of the date of such termination, the Parties agree that said termination shall end Contractor's commitment to fund PFTT and any of such private (i.e., non-Federal) monies that have not been expended under such PFTT program shall remain the property of the Contractor.

(2) If Contractor has not executed an Agreement to a Subject Invention, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or to such other entity designated by the Government, unless Contractor can demonstrate that it has expended at least twenty thousand dollars ($20,000) of private monies in its privately-funded technology transfer program toward commercialization (to include patenting costs, including payments to DOE under paragraphs (a)(2)(ii) or (iii), licensing, technology maturation, marketing and/or development, etc.) of such Subject Invention, and the Contractor has fulfilled all of the commitments under the intellectual property provisions of this Contract relating to such Subject Inventions. In the event Contractor retains title to a Subject Invention under this paragraph, the distribution of royalties, fees, equity or other consideration from an agreement shall be as set forth in paragraphs (e) and (f) below.

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

(4) The Contractor and the Government shall enter into negotiations prior to such termination or expiration with respect to retention of the title to Subject Inventions. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, DOE's need for continued operation of the Facility, potential commercial use, assumption of patent related liabilities, effective technology transfer, and the need to market the technology. Such negotiations shall not change the disposition of title provided for in subparagraphs (1) and (2) above if the Contractor has fulfilled its obligations under either subparagraph (1) or (2) above unless mutually agreed by the Contractor and DOE.

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

(6) If at any time the Contracting Officer believes that Contractor has not substantially complied with any commitment under this clause regarding any Subject Inventions, the Contracting Officer shall provide written notice to the Contractor of any such non-compliance and the Contractor shall have a reasonable opportunity to either demonstrate that it is in fact in compliance or cure any such non-compliance.

(7) The provisions of paragraphs (b)(1), (2), (3), and (5) above survive expiration or termination of the Contract.

(c) Costs

(1) Except as otherwise specified in the clause of this Contract entitled, "Technology Transfer Mission," as allowable costs for conducting activities pursuant to provisions of that clause, no costs are allowable as direct or indirect costs for the preparation, filing, or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs after the Contractor elects to pursue commercialization of a Subject Invention under its privately-funded technology transfer program pursuant to paragraph (a) above.

(2) If an extension of time for election of a Subject Invention for privately funded technology transfer is approved in accordance with paragraph (a) above, Contractor shall reimburse the Laboratory and the Department of Energy for costs in the form of a one-time flat fee of $1,000 with respect to such Subject Invention during the time period of the extension as reasonable reimbursement for such costs under the circumstances. Such fee is deemed to include, among other things, all patent costs which are incurred under the Contract for all Subject Inventions elected to be treated under privately-funded technology transfer, regardless of when such costs are incurred, and is in addition to the fee set forth in (a)(2)(ii).

(3) In the case of the Contractor's PFTT program, the Contractor shall annually report and certify that all costs incurred, including those for patenting, marketing, technology maturation, and development and licensing after the Contractor elects to treat a Subject Invention as PFTT, have been and will be paid solely from private monies supporting the Contractor's PFTT program, and do not include the use of any Federal funds. Private monies may include industry funding for CRADAs, WFOs and other forms of technology partnership agreements. However, the Contractor shall not have to report and/or certify normal and customary infrastructure-related costs (e.g., the use of the IP Manager database or other databases, Technology Portal, legal files, computers, phones, office space, NREL website, etc.) and incidental costs of effort equivalent to less than 15 minutes provided Contractor pays DOE a yearly fee of $10,000 (as remuneration for such costs) at the beginning of each applicable fiscal year, or other appropriate prorated amount for a lesser period of such fiscal year.

(4) Within 90 days after the end of each Contract year, including after termination of the Contract, the Contractor shall submit a report covering the previous Contract year which:

(i) lists the Subject Inventions elected and/or patent applications filed under its PFTT program;

(ii) certifies the total amount of private monies expended during the Contract year, including those expenses related to patenting, marketing, technology maturation, development and licensing of Subject Inventions; and

(iii) certifies the amount of gross income received from its PFTT program during the Contract year; and

(iv) contains the status summary of its PFTT program required under paragraph (a)(2)(iv) above.

(d) Liability of the Government

(1) Subject to subparagraph (4) below and paragraph (c)(3) above, all costs, including litigation costs, associated with and attributed to Contractor's privately-funded technology transfer program are unallowable regardless of the stage of technology development or background intellectual property existing at the time the Subject Invention is chosen for management with the privately-funded technology transfer program, and notwithstanding the inclusion of publicly funded intellectual property in the Contractor's privately-funded technology transfer program activities.

(2) The Contractor shall not include in any license agreement or assignment with respect to any Subject Invention under this clause any guarantee or requirement that would obligate the Government to pay any costs or create any liability on behalf of the Government.

(3) The Contractor shall include in all licensing agreements or any assignment of title with respect to any Subject Invention under this clause the following clauses unless otherwise approved or directed by the Contracting Officer following consultation with DOE field Patent Counsel:

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

(ii.) "Nothing in this Agreement shall be deemed to be a representation or warranty by Alliance or the U.S. Government of the validity of the patents or the accuracy, safety, or usefulness for any purpose, of any TECHNICAL INFORMATION, techniques, or practices at any time made available by Alliance. Neither the U.S. Government nor Alliance nor any Member of Alliance shall have any liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from:

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

(B) The use of any TECHNICAL INFORMATION, techniques, or Practices disclosed by Alliance; or

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

(4) If the Contractor desires to defend or initiate litigation to resolve an infringement claim or lawsuit which involves Subject Inventions under both the PFTT and the GFTT programs (e.g., if such inventions are bundled together), the Contractor shall seek approval to initiate such litigation from the Contracting Officer through the DOE field Patent Counsel, and if such approval is granted the parties may share litigation expenses and any settlement, subject to negotiation. In such instances, sharing of expenses and settlement monies will be negotiated by the parties and is subject to the approval of the Contracting Officer, who will consult with the DOE field Patent Counsel. If Contracting Officer approval is not granted the Government shall not share in any judgment or settlement, if any, associated with either the defense or initiation of litigation.

(e) Privately-Funded Technology Transfer - Distribution of Gross Income

If the Contractor engages in a privately-funded technology transfer program under the clause of this Contract entitled "Patent Rights - Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor" such that private funds are utilized for technology transfer after the Contractor elects to pursue privately-funded commercialization of the Subject Invention or private funds are utilized for technology transfer of copyrighted software where DOE has approved assertion of statutory copyright by the Contractor and has approved the pursuing of commercialization under the privately funded technology transfer program, gross income from such privately-funded technology transfer program shall be distributed as follows:

(1) Basic Distribution

For the purposes of clarification "gross income" equals all revenue received by Contractor minus the inventor's share less any payments (royalties, fees, etc.) to third parties by virtue of license agreements or inter-institutional agreements with third parties (e.g., joint university or other collaboration with for-profit company) which obligates Contractor to royalty sharing with those third parties. Except as provided in (2) below, sixty-five percent (65%) of gross income shall be retained and may be used as the Contractor deems appropriate, whether at the Facility or not, consistent with 35 USC §200 *et seq*. The remaining thirty-five (35%) will be used at the Facility consistent with 35 USC §200 *et seq.* The amount of gross income shall be calculated on an annual basis consistent with the Contractor's accepted accounting practices.

(2) Adjustment of Distribution

(i) Until such time as the Contractor recovers its commitment of $1.75 million on an ongoing basis, the Contractor's share of gross income shall be ninety percent (90%). Thereafter the Basic Distribution set forth in subparagraph (e)(1) above shall apply unless otherwise adjusted under (ii) or (iii) below.

(ii) **I**n the event the cumulative gross income under the Contractor's privately-funded technology transfer program exceeds one million seven hundred fifty thousand dollars ($1.75 million) during the Base Period of the Contract, the Contractor's share of the gross income shall increase in accordance with the following rubric from that point forward (all figures in cumulative gross income dollars):

In excess of $1.75 million, up to and including $4 million	65% of cumulative gross income up to $1.75 million; plus 70% of cumulative gross income in excess of $1.75 million, up to and including $4 million cumulative gross income
In excess of $4 million, up to and including $8 million	75% of cumulative gross income in excess of $4 million, up to and including $8 million cumulative gross income
In excess of $8 million	80% of income in excess of $8 million cumulative gross income

(iii)The Contractor shall be entitled to receive the greater distribution of (i) or (ii) above during the Base Period.

For Contract periods beyond the Base Period, the highest last rate under the Base Period determined under (1) or (2)(ii) above will apply, with additional incentive rates subject to negotiation.

(iv) The foregoing distributions shall also apply to equity interests received from third parties pursuant to paragraph (f).

(v) If this distribution of income structure is determined by the Parties to be detrimental to attracting investors and growing the laboratory's technology commercialization program, the parties agree to negotiate a new structure more favorable to the investment community at the time such determination is made.

(f) Equity Plan

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

(1) With respect to PFTT, the manner in which the Contractor shall acquire such equity in a third party and a description of how the Contractor shall apportion capital contributions to such third party between the related value of Contractor contributions and the value of contributions representing a license under a Subject Invention;

(2) Where IP bundling has resulted in the use of both privately and publically funded technology transfer, a discussion regarding the recoupment of cost related to licensing, marketing and development;

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

(4) The manner in which the Contractor shall dispose of such equity, giving due consideration to the potential for a conflict of interest between the interests of the Government and the Contractor in accordance with the Contractor's DOE-approved Conflict of Interest Management and Implementation Plan, and

(5) The manner in which Contractor's inventors are compensated.

(6) Mitigation of any conflicts of interest.

(g) In its privately-funded technology transfer program, the Contractor shall be substantially guided by the U.S. Competitiveness and Fairness of Opportunity as set forth herein. For the purpose of clarification and to facilitate technology transfer, the Contractor, in its capacity as operator of the Laboratory, shall be permitted to enter into either traditional CRADA/WFO agreements or and any other subsequently developed or authorized DOE agreement.

(h) The Contractor shall establish procedures implementing its privately-funded technology transfer program including the Contractor's criteria for selecting technologies for the privately-funded technology transfer program. Such implementing procedures shall be provided to the Contracting Office for review and approval as soon as possible (estimated forty-five (45) days) after execution of the Contract modification authorizing privately-funded technology transfer. The Contracting

Officer shall have the equivalent period of time that it took for the Contractor to submit, but no less than thirty (30) days thereafter, to approve or require specific changes to such procedures and if the Contracting Officer does not act within the period established above for approval, said procedures shall be deemed approved.

(i) In the case of the Contractor's privately-funded technology transfer program, the Contractor shall certify as part of the report required under subparagraph (c) (4) above, that subject to paragraph (c)(3) above all costs of its PFTT Program, including but not limited to licensing, marketing, technology maturation and development incurred after the Contractor elects to treat a subject invention as PFTT have been and will be paid solely from the Contractor's privately-funded technology transfer program.

(j) To the extent the Department determines that the Laboratory's mission or function is being negatively impacted by the PFTT Program, DOE retains the right to require the Contractor's privately-funded technology transfer program to be administered solely by a nonlaboratory employee(s) who shall not utilize any laboratory facilities without the written approval of the Contracting Officer.

(k) When requesting approval from DOE to assert statutory copyright pursuant to the clause entitled "Rights in Data—Technology Transfer" (Clause I.125 of this Contract), the Contractor may request that commercialization of such software proceed under the PFTT program (i.e., the provisions of this Clause H.37). If permission to assert copyright (consistent with the requirements of the Copyright Act of 1976, as amended and 17 U.S.C. § 302(c)) and trademark rights (consistent with the requirements of the Trademark Act of 1946 ("Lanham Act") as amended and 15 U.S.C. § 1058) is approved by DOE, subject to subparagraph (e)(3) above, no costs of such commercialization thereafter shall be allowable, and the proceeds of such commercialization shall be treated in accordance with subparagraph (e)(1) above as if such proceeds had resulted from the commercialization of a Subject Invention. Further, any software may be added to the PFTT program at any time, provided that the Contractor secures or has secured such authorization to assert statutory copyright. For every piece of copyrighted software that the Contractor adds to the PFTT Program, the Contractor must notify the Contracting Officer and provide a concise statement of its strategy and proposed milestones for information purposes only. If software earlier added to the PFTT Program is later determined by the Contractor and DOE to be required or identified for inclusion in DOE mission work, or other Government work, using GFTT funds or other Government funding, the character of any enhanced or otherwise derivative software (Enhanced Software) resulting from such work shall be deemed to be GFTT, not PFTT. Enhanced Software may also be added to the PFTT Program based upon the requirements set forth in this paragraph for software. Upon termination or expiration of the Contract, such software, or Enhanced Software, will be treated as if such software, or Enhanced Software were a Subject Invention elected under the Contractor's PFTT program. Disposition of title to such software, or Enhanced Software, will be governed by the provisions of subparagraphs (b)(1)-(b)(5) above, except that the $20,000 expenditure requirement for Subject Inventions set forth in subparagraph (b)(2) is not applicable to such software or Enhanced Software. The Contractor shall comply with the obligations set forth in the Rights in Data—Technology Transfer" (Clause I.125 of this Contract) related to computer software or data. However, the Contractor shall not be required to furnish an abstract suitable for publication or the source or object code for such software (or Enhanced Software) program to the Energy Science and Technology Software Center or provide an abstract of the data or copy of such data to the Office of Scientific and Technical Information.

(1) Except as provided in (2) below, all records associated with Contractor's PFTT program shall be treated as Contractor-owned records under the provisions of paragraph (b) of Clause I.111. and shall not be subject to any other provisions of Clause I.111.

(2) DOE may inspect and copy any of Contractor's financial records which demonstrate: (i) the unallowable costs associated with Contractor's PFTT Program, and (ii) revenue derived from said Program. DOE acknowledges that Contractor asserts that any and all such records are privileged or confidential commercial and/or financial information which is exempt from release under the Freedom of Information Act pursuant to exemption (b)(4).

(l) If DOE extends the Contractor's Contract pursuant to Clause I.25, to Extend the Term of the Contract, the Parties agree Alliance's PFTT program shall remain in effect, for all Subject Inventions, software or Enhanced Software whether previously or subsequently elected into Contractor's PFTT Program subject to Alliance's fulfillment of all obligations under this Clause H. 37, for the period of October 1, 2013 through September 30, 2018. The Contracting Officer shall determine whether obligations under this Clause have been fulfilled as part of the Contractor's annual performance assessment and at other times as deemed necessary by the Contracting Officer.

H.38 Reserved

H.39 Applicability Of I.158 52.234-4 Earned Value Management System (Nov 2016)

In applying Clause I.158 FAR 52.234-4 Earned Value Management System (Nov 2016) the dollar thresholds at which the contractor must utilize a certified Earned Value Management System are provided in DOE O413.3B.

H.40 DOE Access to Contractor's Leased Premises

(a) Conditions of Access. The parties agree that from time to time the Contractor shall assist DOE by accommodating access to all or a portion of Contractor's leased premises by DOE personnel and its contractors (if any). Such access: (1) shall be reimbursed by DOE to the Contractor; (2) shall be funded by DOE during such access; (3) shall be assigned to a successor contractor in the event of termination or conclusion of Contractor's management and operating contract; and (4) shall be administered in accordance with an ancillary Access License between the parties.

(b) Cost Reimbursement. The parties agree that the following costs shall be prorated and reimbursed by DOE for any portion of the Contractor's leased premises accessed by DOE personnel and its contractors.

DOE shall reimburse the Contractor for the following:

(1) all costs under the Contractor's lease attributable to DOE's access, when such costs are incurred by the Contractor;
(2) costs for DOE's alterations to Contractor's leased premises attributable to DOE's access, when such costs are incurred by the Contractor;

(3) facility costs attributable to DOE's access, including but not limited to maintenance, security and badging (if any), personal property management, sustainability, and janitorial;
(4) costs for services specifically requested by DOE and attributable to DOE's access, including but not limited to security systems and infrastructure;
(5) costs for facilities/alterations administration and lease administration attributable to DOE's access and alterations; and
(6) any applicable indirect costs in accordance with the Contractor's Cost Accounting Disclosure Statement.

(c) Funding commitments. Subject to the availability of funds, prior to each fiscal year in which the DOE intends to access a portion or all of the Contractor's leased premises, the DOE Contracting Officer shall annually confirm in writing DOE's commitment to reimburse the Contractor for that year's costs attributable to DOE's access to Contractor's leased premises. In the event that the DOE terminates its access to Contractor's leased premises prior to termination of Contractor's management and operating contract, the Contractor's lease costs shall revert to an allowable cost in accordance with the terms of Contractor's management and operating contract.

(d) Assignment to successor contractor. In the event that the Contractor's management and operating contract is terminated for convenience or cause or naturally concludes and DOE continues to require access to the facilities, the DOE shall direct its successor contractor to assume the Contractor's lease, and the ancillary Access License (collectively, the "Lease") under which the Contractor accommodates DOE's access to all or a portion of Contractor's leased premises. Upon assignment to and assumption of the Contractor's Lease obligations by the successor contractor, the Contractor shall be relieved of all responsibility of the entire Lease and the successor contractor shall assume exclusive responsibility for performance of the Lease obligations. DOE shall reimburse Contractor's costs attributable to processing the transfer of the entire Lease to its successor contractor in accordance with the terms of Contractor's management and operating contract. In the event the contract is terminated for convenience or cause or naturally concludes and DOE no longer requires access to the facilities, the Contractor's Lease costs shall revert to an allowable cost in accordance with the terms of Contractor's management and operating contract.

(e) Access License. The parties agree to negotiate in good faith, execute, and annually review an ancillary Access License setting forth the procedures and practices under which DOE shall access Contractor's leased premises. At any time during the term of DOE's access to Contractor's leased premises, either party may propose revisions to the Access License to accommodate changed circumstances. The parties agree to negotiate in good faith such proposed revisions with reasonable promptness.

H.41 Reserved

H.42 Agreements for Commercializing Technology

This H-clause authorizes the use of the mechanism: Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this H-clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessary aimed at commercialization (e.g., technical assistance, training, studies), but which facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated with this M&O contract for the purposes of conducting technical services[1], training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor's custody or available to the M&O Contractor under this M&O contract (unless specifically excluded by the Contracting Officer). For M&O Contractor activities conducted under authority of this H-clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph 9 below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the M&O Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

[[1] Services that are routinely performed for DOE and multiple sponsors with little to no variance in the scope of work e.g., calibration services.]

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

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

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

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

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

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

Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;

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

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

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

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

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

DISCLAIMER

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

4. *Contracting Authority*.

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

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

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

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

      (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 M&O Contractor shall include additional information as necessary or as requested by the Contracting Officer.

   c. The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the M&O Contractor under subparagraph 4.b. of this H-clause within ten (10) business days of receiving the Package and provide the M&O Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: (1) is consistent with or complementary to

DOE missions and the contract statement of work; (2) will not adversely impact programs under the contract scope of work; (3) will not place the contractor in direct competition with the domestic private sector; and (4) will not create a detrimental future burden on DOE resources.

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

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

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

5. *Advance Payment for ACT Projects*. The M&O Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this H-clause consistent with procedures defined in the Department's Financial Management Handbook. The M&O Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this H-clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the M&O Contractor's work under this H-clause, the M&O Contractor is entirely at risk and the Government shall have no risk.

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

   a. Work conducted under this H-clause shall be excluded from the M&O contract award fee calculations and such fee shall not be allocable to work conducted under this H-clause.

b. Federal funds will not be used to fund work conducted under this H-clause except as authorized under the FedACT pilot (see paragraph 14 below).

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

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

   b. *Priority of Work*. The M&O Contractor shall not give work under ACT any special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the M&O Contractor's input.

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

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

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

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

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

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

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

e. Where the M&O Contractor receives ownership or license rights to ACT IP, the M&O Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this M&O contract.

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

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

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

9. *Contractor Liability and Indemnification.*

a. *General Indemnity*.

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

Government, the Department, or persons (other than the M&O Contractor) acting on their behalf.

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

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

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

c. *Product Liability Indemnity*.

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

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

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

e. *Government Obligations*. The M&O 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 M&O Contractor executes under authority of this H-clause. The M&O Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the Government, such that, the M&O Contractor will be responsible for any costs or liability due to such a guarantee or requirement.

f. *Insurance*. Any cost of insurance to cover risks of the M&O Contractor associated with ACT agreements is unallowable under this contract.

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

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

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

13. *Minimum Reporting requirements*. The M&O Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but

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

14. *FedACT Pilot*. Under this paragraph the DOE is authorizing a 3-year pilot program for Federally funded ACT (FedACT). FedACT contracts are ACT agreements between the M&O Contractor and a non-Federal third party partner, where a portion of the project funding originates from a Federal agency (i.e., Federal appropriations). In most cases, the industry partner's original source of funds will have been as a result of a contract or financial assistance award from the Federal agency. Any agreement that includes Federal funds must be performed under the FedACT pilot. Federal funds used to support a FedACT project must solely be used to carry out the purposes of the Federal award. FedACT does not include agreements directly funded from another Federal agency. DOE and the M&O Contractor recognize that FedACT is a new mechanism and subject to modifications as more data and experience are realized. During the FedACT pilot either party may suggest changes to the program based on the experiences gained. Furthermore, the M&O Contractor recognizes that the Department may decide to end the FedACT pilot at any time and that termination of the FedACT pilot by the Department will be in accordance with this paragraph. During the FedACT pilot the M&O Contractor is permitted to negotiate and execute such agreements, subject to DOE approval, as described in paragraph 4 above and as set forth herein. The following additional requirements apply:

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

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

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

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

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

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

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

f. Advance payment requirements in Section 5 equally apply to FedACT agreements.
g. All work must be performed at full costs which includes a Federal Administrative Charge (FAC).

h. Termination. The FedACT Pilot implemented by this H-clause will terminate three years from the date AL 2018-06 is issued, unless renewed by the Contracting Officer. The Government may provide the M&O Contractor with written notice to terminate the M&O Contractor's authority to conduct FedACT work under this H-clause at any time. If the Contractor's authority to conduct FedACT work under this H-clause has expired or been terminated, the M&O Contractor will be permitted, subject to any other provisions of this H-clause, to complete any FedACT work that had been approved by DOE prior to this H-clause being terminated by the Government.

H.43 Privacy Act Records

(a) 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:

(1) Emergency Operations Notification Call List (DOE–11)

(2) Employee and Visitor Access Control Records (DOE-51)

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

(4) Access Authorization for ADP Equipment (DOE-53)

(b) 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.

(c) 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 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.

H.44 Reserved

H.45 Conference Management (DOE-H-2068, Oct 2014)

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) For the purposes of this clause, "conference" is defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015 entitled "Updated Guidance on Conference-Related Activities and Spending."

(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 a 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 its 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)

(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 provide 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.

(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 a contractor does so, its expenditures for the conference may be deemed unallowable.

H.46 Management and Operating Contractor (M&O) Subcontract Reporting (DOE-H-7037, Sep 2017)

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

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

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

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

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

H.47. Risk Management and Insurance Programs

1. BASIC REQUIREMENTS

   a. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors), unless it is with unallowable dollars.

b. Insurance programs and related costs must comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 28.308 – Self-Insurance, FAR 31.205- 19, Insurance and Indemnification, and DEAR 970.5228-1, Insurance- Litigation and Claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. PLAN EXPERIENCE REPORTING. The Contractor shall:

a. Provide the Contracting Officer 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, if applicable.

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

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

4. INSURANCE POLICY CANCELLATION.

The Contractor shall:

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

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

H.48 Contractor's Performance of Obligations under DOE/GFO's Small Generator Interconnection Agreement with Public Service Company of Colorado (SGIA385-0.0.0) for NREL/NWTC Wind and Solar Generation Project

On April 5, 2017 the United States Department of Energy acting through its Golden Field Office (DOE/GFO) ("Interconnection Customer") executed a Small Generator Interconnection Agreement for the NREL/NWTC Wind and Solar Generation Project No. SGIA385-0.0.0 (SGIA) with Public Service Company of Colorado (PSC) ("Transmission Provider").

On April 5, 2017 Alliance for Sustainable Energy LLC, (Alliance), acting in its role as the Contractor responsible for the management and operations of the National Renewable Energy Laboratory (NREL,) concurred with the SGIA.

(a) Subject to DOE/GFO oversight, the Contractor shall provide all services necessary to perform the Interconnection Customer obligations set forth in the SGIA between DOE/GFO and PSCo. Such services shall include but are not limited to the following:

(1) construct, interconnect, operate and maintain the Small Generating Facility and construct, operate, and maintain the Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, in accordance with the SGIA, and with Good Utility Practice.

(2) construct the facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards.

(3) design, install, maintain, and operate the Small Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the Transmission Provider or Affected Systems.

(4) operate, maintain, repair, and inspect, and shall be responsible for the facilities that DOE/GFO now or subsequently may own unless otherwise specified in the Attachments to the SGIA.

(5) ensure that third party owners of generation facilities located at the NWTC operate, maintain, repair, and inspect, and shall be responsible for their facilities.

(6) be responsible for the safe installation, maintenance, repair and condition of the lines and appurtenances on the DOE/GFO side of the point of change of ownership.

(7) provide Interconnection Facilities that adequately protect the Transmission Provider's Transmission System, personnel, and other persons from damage and injury.

(8) coordinate with DOE/GFO to receive written authorization from the Transmission Provider before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the Transmission System.

(b) Contractor's performance of such services shall be reimbursed under, and administered in accordance with, the terms and conditions of the Contractor's management and operating contract; and in the event of termination or conclusion of Contractor's management and operating contract Contractor shall follow DOE's direction for continued operation or disposition.

H.49 Contractor Assurance System

(a) The Parties have agreed that the Contractor will develop a Contractor Assurance System (CAS) covering environment, safety, security, health and business and financial systems. The CAS will allow appropriate GFO federal personnel to have access to a Contractor developed CAS Information System which will allow them direct access to the same information used by the Contractor's Leadership Team to manage and operate NREL. The Parties have agreed that Phase 1 will be implemented by June 30, 2017 with additions to the Information System occurring subsequently. The initial contractor assurance system description shall be approved by the Contracting Officer.

(b) The CAS, as designed and implemented throughout the Contractor's organization, is intended to provide 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 CAS, at a minimum, shall include the following key attributes:

(1) An implementation plan that considers and mitigates risks has been submitted by the Contractor and approved by the Contracting Officer.

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

(3) 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.

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

(6) Timely notification to the Contracting Officer of significant assurance system

changes prior to the changes.

(7) An issues management system in accordance with Attachment 1, Contractor Requirements Document to DOE Order 226.1B Implementation of Department of Energy Oversight Policy.

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

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

(10) Continuous feedback and performance improvement.

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

(c) The Contracting Officer will identify, in writing, to the Contractor those GFO federal personnel who will have access to the CAS Information System and Contractor will provide such access after they have undergone appropriate training consistent with the same requirements Contractor imposes on its employees.

(d) The Parties also intend that to the maximum extent possible that GFO's direct access to the information maintained on the CAS Information System will allow the Contractor and Contracting Officer to agree to the elimination of the need to submit to DOE those contractually required reports which contain the identical or substantially similar information.

(e) 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.

(f) GFO will ensure that its employees with access to the CAS Information System will treat such information in the same manner as they would treat information obtained from a third party that would be exempt (e.g., trade secrets and commercial or financial information obtained from a person and privileged or confidential) from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

H.50 Real Property Asset Management

(a) The Contractor shall comply with Departmental requirements and guidance involving the acquisition, life cycle management, maintenance, disposition, or disposal of real property assets to ensure that real property assets are available, utilized, and in a suitable condition to accomplish DOE's missions in a safe, secure, sustainable, and cost-effective manner. Contractors shall meet these functional requirements through tailoring of their business processes and management practices, and use of standard industry practices and standards as applicable. The Contractor shall flow down these requirements to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements. Notwithstanding any other provision of the contract, the prior approval of the Contracting

Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property.

(b) Contractor shall:

(1) Submit all real estate actions to acquire, utilize, and dispose of real property assets to DOE for review and approval and maintain complete and current real estate records.

(2) Perform physical condition and functional utilization assessments on each real property asset at least once every five-year period or at another risk-based interval as approved by the Contracting Officer based on industry leading practices, voluntary consensus standards, and customary commercial practices.

(3) Establish a maintenance management program including: a computerized maintenance management system; a condition assessment system; a master equipment list; maintenance service levels; a method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies as either deferred maintenance and repair (DM) or repair needs; management of the DM backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.

(4) Maintain Facilities Information Management System (FIMS) data and records for all land, buildings, trailers, and other structures, and facilities. FIMS data must be current and verified annually.

H.51 Workforce Restructuring

(a) The Contractor shall regularly analyze workforce requirements and will develop appropriate workforce restructuring strategies to ensure continued availability of the critical workforce knowledge, skills, and abilities necessary for performance under this Contract.

(b) When the Contractor determines that a change in the workforce is necessary, the Contractor shall accomplish the workforce restructuring in a manner consistent with the DOE General Workforce Restructuring Plan, if applicable, in effect for the facility or site. The General Plan lays out how contractor workforce restructuring will be conducted at the applicable site in a manner that is consistent with DOE policy.

The Contractor is only required to provide notification of Self-Select Voluntary Separation Programs (SSVSP) of 100 or more if consistent with the following parameters: 1) in accordance with approved laboratory and contractor policies and contract requirements; 2) no enhanced benefits (severance or pension); 3) no backfilling or re-employment of employees for a one-year period after severance is paid; 4) business case submitted 5 business days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a SSVSP will better position the contractor to conduct the mission work; copies of the self-select application and any employee waivers or releases of claims, and a communication plan; and 5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. There is no backfilling where a separating employee is replaced by an internal candidate so long as:

(A) The separating employee is leaving voluntarily;

(B) The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, or other short term program;

(C) The replacement results in a net reduction in headcount and costs of regular employees; and

(D) The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.

(c) The Contractor shall ensure it does not hire or rehire individuals who volunteered for termination during a Self-Select Voluntary Separation Program, at any DOE or NNSA site, during the one-year period following the separation. If an employee is hired or rehired prior to the one-year period, the employee may be required to pay back, to the contractor who provided the severance payment, all or a pro-rata amount of the severance received under the Voluntary Separation Program.

(d) The Contractor must prepare and submit to the Contracting Officer a specific workforce restructuring plan (Specific Plan), as described below in paragraph (e), if the Contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.

(e) The Contractor's Specific Plan shall lay out how the Contractor will conduct its workforce restructuring action at the site. The Contractor's Specific Plan for reducing 100 or more employees through an involuntary separation action shall be submitted to the Contracting Officer for approval at least 15 days in advance of the first communication planned to be given to the employees and public. Any other Specific Plans must be submitted just in advance of the first communication planned to be given to the employees and public. The templates for contractor Involuntary Separation Plan, as well as the General Release and Waiver Forms, are available online at: http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

(f) Pay-in-lieu of notice beyond two work-weeks requires written advance Contracting Officer approval. The Contractor shall submit the request to the Contracting Officer as part of the Workforce Restructuring package submitted for approval in (e) above, and include the number of days of pay-in-lieu of notice requested, above two work-weeks, a detailed business justification, and the associated costs.

(g) The Contractor is encouraged to consider the use of employee waivers and releases. DOE has developed a model waiver and release of claims. The forms are available on line at the website set forth in (e) above. Any deviation from the models must be approved by the Contracting Officer.

(h) The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the Contracting Officer and DOE or National Nuclear Security Administration (NNSA) site counsel, as applicable, prior to notification of employees selected for involuntary separation.

(i) The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.

(j) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.

(k) Questions of cost allowability related to: a) any SSVSPs for which the Contractor provides only notification, or b) any involuntary separation program(s) conducted without Contracting Officer approval will be resolved consistently with applicable laws and regulations and with the terms and conditions of this contract, including, but not limited to, Department of Energy Acquisition Regulation (DEAR) at 48 C.F.R. 952.231- 71(f).

H.52 Definition of Unusually Hazardous or Nuclear Risks and Other Terms for purposes of FAR Clause 52.250-1, Indemnification Under Public Law 85-804 (April 1984) Alt 1 (Apr 1984)

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

(1) Participation in COVID 19 Pandemic activities as defined in the March 26, 2020, Secretarial determination authorizing Public Law 85-804 Indemnification for Contractors Engaging in Activities Responding to COVID 19 :

Participation in tasks or activities by the contractor or its subcontractors on or after March 13, 2020 through June 30, 2020 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration, including work for others, as an element of activities taken now and through June 30, 2020 in response to COVID-19, including but not limited to efforts to test for the presence of COVID-19, to provide equipment and resources to address COVID-19, and to develop treatments and vaccines for COVID-19, to the extent the task or activity is not exempt from liability under the Public Readiness and Emergency Preparedness Act (PREP ACT) or other law, or the exemption under the PREP Act or other law is limited in scope or amount which is not sufficient to provide complete protection against the liability to which the contractor is exposed.

H.53 Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state.

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

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

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

- Pre-approval beyond September 30, 2020 is limited. Once access to the site is restored, partially or completely, Weather and Safety or other equivalent paid leave ends for the portion of the site for which access is restored-unless the Contracting Officer, approves continuation in advance.

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

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

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

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

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

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

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

H.54 Coronavirus (COVID-19) Vaccine

(a) The Contractor, as an authorized COVID-19 Vaccination Program Provider, may administer COVID-19 vaccinations to Contractor employees and contingent workers, federal employees,

employees of other DOE management and operating contractors, and/or others, in accordance with work authorization requirements, Inter-Contractor Purchase requirements, and/or other written direction/approvals provided by the Contracting Officer. The Contractor shall perform such duties in accordance with Federal and State laws, regulations, and guidelines, including direction from any Authority Having Jurisdiction (as that term is defined by relevant Public Readiness and Emergency Preparedness Act Declarations), applicable Vaccination Program Provider Agreements, and any other applicable COVID-19 immunization direction applicable to the Contractor as a condition of receipt of COVID-19 vaccine doses.

H.55 Contractor's Obligations Concerning U.S. Manufacturing Requirements of a Determination of Exceptional Circumstances (DEC)

(a) Applicability
This clause is applicable to work performed by the Contractor subject to a Determination of Exceptional Circumstance (DEC) under 35 U.S.C. 202(a) (ii) and in accordance with 37 CFR Part 401.3(e) having U.S. manufacturing requirements.

(b) U.S. Manufacturing Requirements for Subject Inventions

(1) In addition to the U.S. Preference provision in Patent Rights clause (48 CFR 970.5227-10 including any modifications) and the U.S. Industrial Competitiveness provision in the Technology Transfer Mission clause (48 CFR 970.5227-3 including any modifications) in the Contractor's prime contract with DOE, the Contractor agrees to comply with the manufacturing requirements of all applicable DECs, including any remedies for breach of the applicable manufacturing requirements.

(2) The Contractor is required to comply with requirements of applicable DECs including, but not limited to, any U.S. Manufacturing Plans or Commercialization Plans. If the Contractor fails to comply with an applicable DEC or any related/required U.S. Manufacturing or Commercialization Plans, the Contractor is subject to any enforcement provisions of the applicable DEC, including, but not limited forfeiture of rights to subject inventions.

(3) Request for a waiver of any U.S. manufacturing requirements, including the U.S. Preference provision in the Patent Rights clause (48 CFR 970.5227-10 including any modifications), the U.S. Industrial Competitiveness provision in the Technology Transfer Mission clause (48 CFR 970.5227-3 including any modifications), and any applicable U.S. Manufacturing or Commercialization Plan must be approved by the funding program in addition to the Contracting Officer. Such waiver requests must be accompanied by substantial evidence that it is not commercially feasible to comply with the U.S. manufacturing requirement and provide commitments that benefit the U.S. economy. These conditions shall be binding on any subsequent assignee, sublicensee, or any entity acquiring rights to any elected subject inventions.

H.56 EPAct Data Protection

(a) Rights to Protected Data

(1) In addition to the data rights set forth in 48 CFR § 970.5227-2 - Rights in data-technology transfer, for work authorized under the Energy Policy Act of 2005 (EPAct 2005) or the Energy Policy Act of 1992 (EPAct 1992), the Contractor may, with the concurrence of DOE, claim and mark as EPAct Protected Data, any data first produced in the performance of such work that would have been treated as a trade secret if developed at private expense. Any such claimed

"EPAct Protected Data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraph (b) of this clause.

Protected Rights Notice

These protected data were produced under *[INSERT WORK IDENTIFIER]* with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until *[INSERT PERIOD OF PROTECTION END]* (Note: The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

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

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

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

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

(i) At the end of the protected period;

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

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

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

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

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

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

(b) Unauthorized or Omitted Marking of Data

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

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

H.57 Key Personnel (DOE-H-2070, OCT 2014) – Alternate I (OCT 2014)

(a) Pursuant to the clause at DEAR 952.215-70, Key Personnel, the key personnel for this contract are identified below:

Martin Keller, Ph.D., Laboratory Director & President of Alliance for Sustainable Energy, LLC

Julie Baker, Deputy Laboratory Director/Chief Operating Officer & Senior Vice President of Alliance for Sustainable Energy, LLC

Peter F. Green, Ph.D., Deputy Laboratory Director, Science & Technology/Chief Research Officer & Senior Vice President of Alliance for Sustainable Energy, LLC

In addition to the requirement for the Contracting Officer’s approval before removing, replacing, or diverting any of the listed key personnel, the Contracting Officer’s approval is also required for any change to the position assignment of a current key person.

(b) Key personnel team requirements. The Contracting Officer and designated Contracting Officer's Representative(s) shall have direct access to the key personnel assigned to the contract. All key personnel shall be permanently assigned to their respective positions.

(c) Definitions. In addition to the definitions contained in the clause at DEAR 952.215-70, the following shall apply:

(1) The term “reasonably in advance” is defined as 90 calendar days.

(2) Key personnel are considered “managerial personnel” under the clause at I.134 970.5228-1 Insurance – Litigation and Claims.

(d) Contract fee reductions for changes to key personnel.

(1) Notwithstanding the approval by the Contracting Officer, any time a Key Person (Laboratory Director; Deputy Laboratory Director, Science and Technology; or Deputy Laboratory Director, Chief Operating Officer) is removed, replaced, or diverted during the term of this contract extension from November 4, 2022 through September 30, 2023, the earned fee under the contract may be permanently reduced by $800,000 for each and every such occurrence; from October 1, 2023 through September 30, 2024, the earned fee under the contract may be permanently reduced by $700,000 for each and every such occurrence; from October 1, 2024 through September 30, 2025, the earned fee under the contract may be permanently reduced by $600,000 for each and every such occurrence; from October 1, 2025 through September 30, 2026, the earned fee under the contract may be permanently reduced by $500,000 for each and every such occurrence; from October 1, 2026 through September 30, 2027, the earned fee under the contract may be permanently reduced by $400,000 for each and every such occurrence, from October 1, 2027 through September 30, 2028, the earned fee under the contract may be permanently reduced by $300,000 for each and every such occurrence.

(2) The Contractor may request in writing that the Contracting Officer consider waiving all or part of a reduction in earned fee. Such written request shall include the Contractor’s basis for the removal, replacement, or diversion of any key personnel. The Contracting Officer shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

H.58 Safety Culture (DOE-H-2083, Feb 2022)

The Contractor shall promote a strong safety culture which encourages safe performance of work and involvement of workers in all aspects of work performance and promotes core values that should be deeply, strongly, and consistently held by managers and workers. Contractor organizations shall foster that culture though proscribed contract actions designed to establish leadership commitment and behaviors consistent with those values; promoting a safety conscious work environment (SCWE) in which employees are encouraged to freely raise safety concerns to management without fear of retaliation; prioritizing concerns based on safety significance; addressing and resolving those concerns in a manner that provides transparency; and supporting a questioning attitude concerning safety by all employees.

The Contractor shall:

(a) Adopt and continuously improve Organizational Culture, Safety Culture, and SCWE, including implementation and utilization of programs/processes that support employees raising concerns without fear of retaliation. These programs/processes include, but are not limited to, the Employee Concerns Program; the Differing Professional Opinions Process; Ethics and Compliance Program/Process; and Alternative Dispute Resolution.

(b) Continuously promote a work environment where employees are encouraged to raise concerns. The Contractor shall define expectations, rigorously reinforce those expectations, and take actions to mitigate the potential for a chilling effect.

(c) Conduct business in a manner fully transparent to DOE. Activities are demonstrated by open, clear, and well-communicated management actions and technical and project documentation. Identified issues and trends are proactively shared with DOE.

(d) Champion programs which encourage a culture that promotes proactive self-identification and reporting of issues that identifies and takes action on systemic weaknesses leading to sustained continuous self-improvement.

(e) Champion programs which encourage and emphasize the following safety culture attributes as described in DOE G 450.4-1C ISM Guide, Attachment 10, "Safety Culture Focus Areas and Associated Attributes."

(1) Leadership

(i) Demonstrated safety leadership

(ii) Risk-informed, conservative decision making

(iii) Management engagement and time in the field

(iv) Staff recruitment, selection, retention, and development

(v) Open communication and fostering an environment free from retribution

(vi) Clear expectation and account

(2) Employee/Worker Engagement

(i) Personal commitment to everyone's safety

(ii) Teamwork and mutual respect

(iii) Participation in work planning and improvement

(iv) Mindfulness of hazards and controls

(3) Organizational Learning

(i) Credibility, trust, and reporting errors and problems

(ii) Effective resolution of reported problems

(iii) Performance monitoring through multiple means

(iv) Use of operations experience

(v) Questioning attitude