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SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 Service Being Acquired

The Contractor shall provide the personnel, facilities, equipment, materials, supplies, and services, (except such facilities, equipment, materials, supplies and services as are furnished by the Government), and shall perform in a quality, timely, and cost-effective manner the requirements and work set forth in this contract. The Contractor shall perform all work in a manner that complies with applicable environmental, safety and health (ES&H) laws and regulations.

B.2 Obligation of Funds and Financial Limitations

The amount presently obligated by the Government with respect to this contract is \$452,000.00. Other financial limitations are also specified in Section I Clause, "DEAR 970.5232-4, Obligation of Funds."

B.3 Performance and Other Incentive Fees

- (a) The transition activities shall be performed on a cost-reimbursement basis up to the amount specified in Section H Clause, "Activities During Contract Transition," and no fee shall be paid for these activities.
- (b) In implementation of Section I Clause, DEAR 970.5215-1, "Total Available Fee: Base Fee Amount and Performance Fee Amount," the maximum available performance fees that may be earned by the Contractor in accordance with the provisions of Section J, Appendix B, "Performance Evaluation and Measurement Plan," for the performance of the work under this contract are as follows:

June 1, 2006 through September 30, 2006	<u>\$ 1,033,333.00</u>
October 1, 2006 through September 30, 2007	<u>\$ 3,100,000.00</u>
October 1, 2007 through September 30, 2008	<u>\$ 3,100,000.00</u>
October 1, 2008 through September 30, 2009	<u>\$ 3,100,000.00</u>
October 1, 2009 through September 30, 2010	<u>\$ 3,100,000.00</u>
October 1, 2010 through May 31, 2011	<u>\$ 2,066,667.00</u>

- (c) If DOE determines that the Contractor has earned Award Term extensions in accordance with the provisions of Section F Clause, "Award Term Incentive" and the DEAR, the maximum available performance fee that may be earned by the Contractor shall be:

June 1, 2011 through September 30, 2011	<u>\$ 1,033,333.00</u>
October 1, 2011 through September 30, 2012	<u>\$ 3,100,000.00</u>
October 1, 2012 through September 30, 2013	<u>\$ 3,100,000.00</u>
October 1, 2013 through September 30, 2014	<u>\$ 3,100,000.00</u>
October 1, 2014 through September 30, 2015	<u>\$ 3,100,000.00</u>
October 1, 2015 through May 31, 2016	<u>\$ 2,066,667.00</u>

- (d) The maximum available performance fee that may be earned by the Contractor for any additional extensions of the period of performance in paragraph (c) shall be subject to negotiation in accordance with Section I clause, "DEAR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount." In the event the parties are unable to reach agreement on the annual maximum available performance fee, the Government reserves the right to unilaterally establish this amount.
- (e) At the end of each fiscal year, there shall be no adjustment in the amount of the maximum available performance fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only –
- (1) under the provisions of Section I Clause, "DEAR 970.5243-1, Changes;" or
 - (2) for a +/- 10 percent change in the estimated fee base.
- (f) The following formula will be used in determining any adjustments under paragraph (e):

$$\frac{\text{Maximum available performance fee for applicable year of paragraph (b) or (c)}}{\$3,100,000} \times (3.4\% \times \text{Adjusted Fee Base})$$

B.4 Allowability of Subcontractor Fee

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this Contract fee structure and separate additional subcontractor fee for teaming partners shall not be considered an allowable cost under the contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract unless otherwise approved by the Contracting Officer.

B.5 Provisional Payment of Performance Fee

The Contractor may, subject to the approval of the Contracting Officer, be paid provisional performance fee payments consistent with the provisions of Section I Clause "DEAR 970.5232-2, Payments and Advances." The Contractor shall promptly refund to the Government any amount of provisional performance fee paid that exceeds the amount of performance fee earned.

PART I

THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

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SECTION C

DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 INTRODUCTION

This Performance-Based Management Contract (PBMC) is for the management and operation of the Thomas Jefferson National Accelerator Facility (referred to as TJNAF or the Laboratory). The Contractor shall, in accordance with the provisions of this contract, accomplish the missions and programs assigned by the U.S. Department of Energy (DOE) and manage and operate TJNAF. TJNAF, as one of the DOE's Office of Science (SC) program-dedicated Laboratories, uses intense polarized electron beams to conduct research for the DOE Nuclear Physics Program. This research addresses one of the five major scientific questions of the Nuclear Physics Program identified in the DOE/National Science Foundation (NSF) Nuclear Science Advisory Committee's 2002 Long Range Plan.

TJNAF is a Federally Funded Research and Development Center (FFRDC) established in accordance with the Federal Acquisition Regulation (FAR) Part 35 and operated under this management and operating (M&O) contract, as defined in FAR 17.6 and DEAR 917.6.

The Contractor has the responsibility for total performance under the contract, including determining the specific methods for accomplishing work, performing quality control, and assuming accountability for accomplishing the work under the contract.

Because the research activities of TJNAF are dynamic, this Statement of Work (SOW) is not intended to be all inclusive or restrictive, but is intended to provide a broad framework and general scope of the work to be performed at TJNAF during the term of the contract. This SOW does not represent a commitment to, or imply funding for, specific projects or programs. All projects and programs will be authorized individually by DOE and/or other work sponsors in accordance with Section H Clause, "Work Authorization."

C.2 PERFORMANCE EXPECTATIONS, OBJECTIVES, AND MEASURES

C.2.1 – Expectations for Program Development and Mission Accomplishment

The Contractor will provide the highest quality of planning, management, and execution of assigned research and development programs. The Contractor will execute assigned programs so as to achieve the greatest possible impact on DOE's mission objectives, to aggressively manage TJNAF's science and technology capabilities and intellectual property to meet these objectives, and to initiate innovative concepts and research proposals that are in concert with DOE missions. The Contractor will propose work that will advance DOE's mission objectives and that is aligned to Laboratory capabilities. The Contractor will strive to meet the highest standards of scientific quality and productivity, delivery of program deliverables on schedule and budget, and first-rate service to the research community through user facility operation.

The Contractor will demonstrate benefit to the nation from research and development (R&D) investments by transferring technology to the private sector and supporting

excellence in science and mathematics education consistent with achieving continuous progress towards DOE's core missions.

The Contractor will be an active partner with DOE in assuring that TJNAF is equipped to meet future mission needs.

C.2.2 - Expectations for Performance Evaluation

The performance expectations of this contract are broadly set forth in this Section and reflect DOE's minimum needs and expectations for Contractor performance. Specific performance work statements, performance standards (measures applied to results/outputs), acceptable performance levels (performance expectations), acceptable quality levels (permissible deviations from performance expectations), and related incentives shall be established annually, or at other such intervals as DOE determines to be appropriate. The related incentives may or may not be monetary; e.g., reducing or increasing DOE oversight or Contractor reporting.

In performance under this contract, the Contractor shall be evaluated within the following general performance goals and expectations:

- (a) Science and Technology (S&T) - The Contractor will deliver innovative, forefront science and technology aligned with DOE strategic goals in a safe, environmentally sound, and efficient manner, and will conceive, design, construct, and operate world-class user facilities.
 - (1) Quality of S&T: Produce original, creative scientific output that advances science and technology while achieving sustained scientific progress and impact that is clearly recognized by the technical community.
 - (2) Relevance to DOE Missions and National Needs: Conduct the highest quality scientific research that advances the missions of DOE and other national programs and contributes to U.S. leadership in international scientific and technical communities.
 - (3) Success in Constructing and Operating Research Facilities & Equipment: Provide quality strategic planning for facilities/equipment needed to ensure TJNAF can meet its S&T missions, while effectively and efficiently maintaining current S&T facilities and equipment and providing effective, efficient operation of user facilities.
 - (4) Effectiveness and Efficiency of Research Program Management: Provide for effective stewardship of Laboratory capabilities, including human expertise, and success in risk management and building relationships with government, universities, and industry.
- (b) Leadership, Management and Operations - The Contractor will provide leadership to assure mission accomplishment and will manage and enhance operations to provide an effective and efficient work environment that enables the execution of TJNAF's mission in a manner responsive to customer and stakeholder expectations.

C.2.3 - Performance Objectives and Measures

The results-oriented performance objectives of this contract are stated in the Performance Evaluation and Measurement Plan (PEMP) (Section J, Appendix B), and/or in the Work Authorization Directives issued annually in accordance with Section H Clause, "Long-Range Planning, Program Development and Budgetary Administration." The Contractor shall develop a five-year Business Plan for the overall direction of TJNAF and for the accomplishment of these objectives. The Plan shall be actively maintained and annually updated in accordance with Business Planning instructions issued by the DOE Contracting Officer. The objectives shall be accomplished within an overall framework of management and operational performance requirements and standards contained elsewhere in this contract. To the maximum extent practicable, these requirements and standards have also been structured to reflect performance-based contracting concepts, including Section H Clause, "Application of DOE Contractor Requirements Documents," which permits the Contractor to propose to the Contracting Officer alternative and/or tailored approaches based on national, commercial or industrial standards and best business practices to meet the outcomes desired by the Government.

DOE's process for evaluating the Contractor's performance under the contract shall consist of the PEMP as called for within Section I Clause DEAR 970.5215-1, "Total Available Fee: Base Fee Amount and Performance Fee Amount." The PEMP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations. The PEMP shall summarize the performance standards, expectations and acceptable quality levels for each task; describe how performance will be monitored and measured; describe how the results will be evaluated; and state how the results will affect contract payment.

The Contractor shall develop and implement a process, acceptable to the Contracting Officer, which provides reasonable assurance that the objectives of the Contractor's management systems are being accomplished and that the systems and controls will be effective and efficient. The Contractor's assurance process shall reflect an understanding of the risks, maintain mechanisms for eliminating or mitigating the risks, and ensure that the management systems and their attendant process(es) meet contract requirements.

C.3 PERFORMANCE-BASED STATEMENT OF WORK

The Statement of Work to be performed under this contract is as follows:

C.3.1 General Scope

The Contractor shall provide, in accordance with the provisions of this contract, the intellectual leadership and management expertise necessary and appropriate to manage, operate, and staff TJNAF in order to accomplish the research mission and roles assigned by DOE; and to perform the work described in this SOW. The DOE research activities are assigned through strategic planning, program coordination, and cooperation between the Contractor and DOE.

In performing the work, the Contractor shall implement appropriate program and project management systems to track progress and pursue cost effectiveness in work activities; develop integrated plans and schedules to achieve program objectives, incorporating input from DOE and stakeholders; maintain sufficient technical expertise to manage activities and projects throughout the life of a program; maintain facilities and infrastructure as necessary to accomplish assigned missions; and utilize appropriate technologies and management systems to improve cost efficiency and performance.

C.3.2 Mission

C.3.2.1 Central Mission

The central mission of TJNAF is to provide the scientific leadership needed to conduct world class science and technological innovation in support of the research program of the Office of Nuclear Physics and other research programs and missions authorized by DOE. TJNAF's mission addresses four distinct goals:

- To perform the highest quality research in Nuclear Physics in a manner that ensures employee and public safety and protection of the environment;
- To develop, maintain, and operate unique national experimental facilities that are available to qualified investigators;
- To educate and train future generations of scientists and engineers to promote DOE's national science and education goals; and
- To transfer knowledge and technological innovations and foster productive relationships among Laboratory research programs, universities, and industry in order to promote national economic competitiveness.

C.3.2.2 General Contractor Requirements

Consistent with Clause C.3.2.1 above, the Contractor shall:

- i. Provide the scientific, technical and administrative leadership, management and expertise needed to sustain and enhance TJNAF as an international unclassified user research facility that meets the high expectations and standards of DOE's science program and its related user community;
- ii. Conduct a strategic planning process and develop business and strategic facility plans in consideration of planning guidance and strategic planning material provided by DOE to assure

consistency with DOE missions and goals and with due regard for Environment, Safety, and Health (ES&H) issues;

- iii. Operate and maintain the electron beam accelerator along with associated beam distribution systems, experimental areas and equipment for the purpose of conducting the approved scientific research program;
- iv. Attract, develop, and retain an outstanding and diverse work force, with the expertise and capabilities needed to meet DOE's evolving mission needs;
- v. Renew and enhance research facilities and equipment so that TJNAF maintains state-of-the-art capabilities over time and is well-positioned to meet future DOE needs;
- vi. Build and maintain, in collaboration with TJNAF's user community, a financially-viable research program that seeks opportunities with the highest possible scientific merit;
- vii. Provide a support program to the user community that will optimize the overall scientific productivity of TJNAF's research program;
- viii. Design, construct, operate and maintain the related facilities necessary to support the accelerator operations and physics research program;
- ix. Provide the necessary facilities and infrastructure to conduct national and international user research at TJNAF in a safe, cost-effective and timely manner;
- x. Conduct experimental and theoretical physics research, including hosting meetings and seminars involving science and technologies related to TJNAF's mission, and publish the results of such research in appropriate scientific journals;
- xi. Maintain a vibrant relationship with the broader research community that enhances the intellectual vitality and research relevance of TJNAF and brings the best possible capabilities for DOE mission needs through partnerships; and
- xii. Build a positive, supportive relationship founded on openness and trust with the local community and region.

C.3.2.3 **Operational and Financial Management Excellence**

The Contractor will effectively and efficiently manage and operate TJNAF through best-in-class management practices designed to foster world-class research while assuring the protection and proper maintenance of DOE research and information assets, the health and

safety of workers, the public, and the environment. The Contractor will operate TJNAF so as to meet all applicable laws, regulations, and requirements. The Contractor will manage TJNAF cost-effectively, while providing the greatest possible research output per dollar of research investment, and, accordingly, develop and implement management systems and practices that are designed to enhance research quality, productivity, and mission accomplishment consistent with meeting operational requirements.

C.3.2.4 Environmental, Safety and Health Management Programs

All work under this contract shall be conducted in a manner that will assure the safety and health of employees and the public. The Contractor shall accomplish this objective by implementing an Integrated Safety Management System that includes an Environmental Management System.

Protection of workers, the public and the environment is paramount. The safety and health of workers and the public and the protection and restoration of the environment are fundamental responsibilities of the Contractor. Accordingly, the Contractor shall implement an Integrated Safety Management (ISM) program that establishes the environmental, safety, and health processes that support the safe performance of all Laboratory work. The ISM system shall incorporate Environmental Management Systems, in cooperation with regulatory agencies. The ISM system shall be applied to all Contractor activities conducted at TJNAF, including those conducted by subcontractors or other entities, and shall include ES&H oversight of both Contractor and subcontractor operations. The work shall include environmental and cultural resource protection, pollution prevention, the safety management program system, risk based worker health program, environmental restoration and waste management, environmental management system, and emergency management programs.

The Contractor shall be responsible for investigations, monitoring, clean-up, containment, restoration, removal, decommissioning and other remedial activity (including any costs for defense of litigation related thereto), for the management and/or clean-up of oil spills, contamination or releases of any solid wastes, hazardous wastes and constituents, hazardous or radioactive substances, wastes or materials present in soil, groundwater, air, surface water, facilities and structures (whether subsurface or above ground), as a result of research or other work conducted by the Contractor during the term of the contract.

The Contractor shall execute pollution prevention efforts to advance cost-effective waste reduction, environmental release reduction, environmentally preferable purchasing, and environmental sustainability in facility construction and operation, in all site operations and facilities covered by this contract.

C.3.2.5 **Integrated Safeguards and Security Management (ISSM)**

The Contractor shall protect TJNAF assets, personnel, property, and information to sustain the science mission in a manner commensurate with risks. The Contractor shall conduct an Integrated Safeguards and Security Management program to include physical site security, protection of Government property, cyber security protections, protection of information, personnel security, export controls, and access control for TJNAF staff and visitors.

C.3.2.6 **Business Management**

The Contractor shall manage an effective integrated system of internal controls for all business and administrative operations of TJNAF.

- i. Human Resources and Diversity: The Contractor shall establish and maintain human resource systems which attract and retain outstanding employees, and continually motivate them to achieve high productivity in scientific research and TJNAF operations.

The Contractor also shall create and maintain an environment that promotes diversity and fully utilizes the talents and capabilities of a diverse workforce. The Contractor shall seek to recruit a diverse workforce by promoting and implementing DOE and Contractor goals. Special consideration will be given to Historically Black Colleges and Universities and Minority Education Institutions as potential resource pools. The Contractor shall also strive to promote diversity in all subcontracting efforts with emphasis on the use of the types of businesses identified in Section H Clause, "Small Business Subcontracting Plan."

- ii. Financial Management: The Contractor shall maintain a financial management system responsive to the obligations of sound financial stewardship and public accountability. The overall system shall include an integrated accounting system suitable to collect, record, and report all financial activities; a budgeting system which includes the formulation and executions of all resource requirements needed to accomplish projected missions and formulate short- and long-range budgets; an internal control system for all financial and other business management processes; and a disbursements system for both employee payroll and supplier payments.
- iii. Purchasing Management: The Contractor shall have a DOE-approved purchasing system to provide purchasing support and subcontract administration. The Contractor shall obtain DOE approval before entering into subcontracts for the performance of any part of the research work under this contract. Refer to Section I Clause, DEAR 970.5244-1, "Contractor Purchasing System."

- iv. **Property Management:** The Contractor shall have a DOE approved property management system that provides assurance that the Government-owned, Contractor-held property is accounted for, safeguarded and disposed of in accordance with DOE's expectations and policies. The Contractor shall perform overall integrated planning, acquisition, maintenance, operation, management and disposition of Government-owned personal and real property, and Contractor-leased facilities and infrastructure. Real property management shall include providing office space for the DOE Site Office. Refer to Section I Clause, DEAR 970.5245-1, "Property."

C.3.2.7 Legal Services

The Contractor shall maintain legal support for all contract activities including, but not limited to, those related to patents, licenses, and other intellectual property rights; subcontracts; technology transfer; environmental compliance and protection; labor relations; and litigation and claims.

C.3.2.8 Information Resources Management

The Contractor shall maintain information systems for organizational operations and for activities involving general purpose programming, data collection, data processing, report generation, software, electronic and telephone communications, and computer security. The Contractor shall provide computer resource capacity and capability sufficient to support TJNAF-wide information management requirements. The Contractor shall also maintain a records management program.

C.3.2.9 Science and Mathematics Education and Other Cooperation with Research and Educational Institutions

The Contractor shall work extensively with colleges and universities, with special consideration for Historically Black Colleges and Universities and Minority Education Institutions, and programs to enhance science and mathematics education at all levels. Participation by a diverse group of faculty and students brings their talents to bear on important research problems and contributes to the education of future scientists and engineers. The Contractor shall also conduct programs for pre-college students and faculty to enrich mathematics and science education. A particular purpose of these programs is to encourage members of under-represented societal groups to enter careers in science and engineering.

The Contractor shall develop a broad program of cooperation with the academic and educational community and with nonprofit research institutions to promote research and education in scientific and technical fields of interest to DOE. The Contractor shall facilitate

interrelationships between TJNAF and other research and educational institutions through implementation of this program. Activities may include, but are not limited to, the following:

- i. Joint experimental programs with colleges, universities, and nonprofit research institutions;
- ii. Interchange of college and university faculty and TJNAF staff;
- iii. Student/teacher educational research programs at the pre-collegiate and collegiate level;
- iv. Post-doctoral programs;
- v. Arrangement of regional, national, or international professional meetings or symposia;
- vi. Use of special TJNAF facilities by colleges, universities, and nonprofit research institutes; or
- vii. Provision of unique experimental materials to colleges, universities, or nonprofit research institutions or to qualified members of their staffs.

C.3.2.10 **International Collaboration**

In accordance with DOE policies, and in consultation with DOE, the Contractor will maintain a broad program of international collaboration in areas of research. This collaboration will be both in areas where DOE has formal international cooperation agreements which assign the Contractor a specific role, as well as in areas of general interest to TJNAF's and DOE's research programs.

This collaboration may include, but is not limited to, such activities as:

- i. Participating in assigned aspects of formal international agreements;
- ii. Maintaining of liaison with peer groups in the international R&D community;
- iii. Participating in programs of international scientific organizations;
- iv. Developing and proposing to DOE, joint experimental programs and/or work for others from international sponsors; or
- v. Participating in programs involving visits, assignments, or exchanges of staff/students.

C.3.2.11 General Assistance and Services

The Contractor shall furnish technical and scientific assistance (including training and other services, material, and equipment), which are consistent with, and complementary to, DOE's mission under this contract, both within and outside the United States. The Contractor may provide these services to DOE and its installations, contractors, and interested organizations and individuals, as may be authorized, in writing, by the Contracting Officer.

C.3.2.12 Other Research and Development Work

The Contractor may conduct research and development work for non-DOE sponsors which is consistent with, and complementary to, DOE's mission under the contract. This work must not adversely impact or interfere with execution of DOE-assigned programs or place the facilities or TJNAF in direct competition with the domestic private sector.

C.3.2.13 Dissemination of Information

The Contractor shall undertake activities pertaining to the dissemination of information relating to energy in general, and TJNAF programs in particular, and the stimulation and encouragement of such work by Contractor employees and TJNAF users, subject to the patent clauses and other applicable clauses of this contract.

C.3.2.14 Special Responsibilities

Provide Operating & Maintenance Services and ES&H Advisory Services for the Applied Research Center (ARC) Building:

- i. The Contractor shall perform the operating & maintenance (O&M) services and ES&H advisory services as specified in the Memorandum of Agreement (Section J, Appendix D) with the Economic Development Authority of the City of Newport News.
- ii. The cost incurred by the Contractor in performing such services shall be in accordance with the provisions of this contract.
- iii. The costs incurred by the Contractor in performing O&M services shall be reimbursed by the Economic Development Authority as specified in paragraph 4 of the Memorandum of Agreement. Any costs that are not reimbursed by the Economic Development Authority shall be forwarded to the Contracting Officer for a determination of allowability.

The Contractor will provide an annual report at the end of each fiscal year detailing the costs incurred in performing O&M services and ES&H advisory services for the Economic Development Authority and costs reimbursed by the Economic Development Authority.

C.3.2.15 Other Activities

The Contractor shall manage facilities and resources to optimize the effectiveness of operations in support of the DOE mission. The Contractor shall maintain critical skill mixes and resources at TJNAF. The Contractor should perform make/buy analyses on work functions that may be inefficient and determine options for improvement. The Contractor shall examine TJNAF operations to consolidate work efforts, eliminate duplication of scientific effort, identify underutilized facilities and reduce operational costs. Site planning activities shall be conducted by the Contractor proactively addressing concerns of DOE, regulatory agencies, and stakeholder groups.

In addition to the services specifically described in other provisions of this SOW, the Contractor shall perform services as DOE and the Contractor shall agree in writing that will be performed from time to time under this contract at TJNAF or elsewhere, as follows:

- (i) Services incidental or related to the services described in other provisions of this SOW.
- (ii) Services in support of DOE programs when the work involved has been determined by DOE to be within the unique capabilities of the Contractor or when the work involved has been determined by DOE to be within the special scientific and technical capabilities of the Contractor and the urgent need for the services precludes acquiring them from another source.

C.4 PLANS AND REPORTS

The Contractor shall submit periodic plans and reports in such form, substance and time frame as required by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The Contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted is compatible with the data elements that the Contractor is responsible for submitting to DOE. Plans and reports which may be submitted in compliance with this provision are in addition to any other reporting requirements found elsewhere in other clauses of this contract. Notwithstanding the Section I Clause, DEAR 970.5243-1, "Changes," the Contracting Officer may require plans and reports to be submitted pursuant to the above without any adjustment in fee under this contract.

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SECTION D
PACKAGING AND MARKING

D.1 Packaging

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to ensure acceptance by common carrier and safe transportation at the most economical rates.

D.2 Marking

Each package, report or other deliverable shall be accompanied by a letter or other document which:

- (a) Identifies the contract number under which the item is being delivered.
- (b) Identifies the contract requirement or other instruction which requires the delivered item(s).

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SECTION E
INSPECTION AND ACCEPTANCE

E.1 FAR 52.246-9 Inspection of Research and Development (Short Form) (APR 1984)

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

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SECTION F

DELIVERIES OR PERFORMANCE

F.1 Period of Performance

- (a) This contract shall be effective as specified in Block No. 28 - Award Date, of Standard Form 33, and shall continue up to five years, unless terminated sooner according to its terms. The contract may be extended in accordance with Section F Clause, "Award Term Incentive." However, the total contract term shall not exceed twenty years.
- (b) The contract transition period is from 60 days after contract award, or as otherwise directed by the Contracting Officer.

F.2 Award Term Incentive

- (a) Definitions. For purposes of this clause:
 - (1) "Award Term Determination Official (ATDO)" means the Department of Energy official designated to determine whether the Contractor has met the contractual requirements in order to earn any award term extension during an evaluation period. The ATDO and the Fee Determination Official (FDO) may be the same person.
 - (2) "Base term" for purposes of this clause only, means the period of performance commencing on the date the Contractor assumes full responsibility for TJNAF pursuant to the provisions of Section H Clause, "Activities During Contract Transition," through the end date specified in Section F Clause, "Period of Performance."
- (b) Eligibility for Award Term Extensions. In order for the Contractor to earn a contract term extension pursuant to the award term incentive, the Contractor shall meet the contract performance objectives, standards, or criteria and other contract requirements applicable to earning additional award term, defined in the Performance Evaluation and Measurement Plan (or equivalent document), as determined by the ATDO.
- (c) Award Term Evaluation and Determination
 - (1) The Government may extend the contract term up to a total of fifteen years beyond the five-year base term through implementation of this clause. The Contractor's performance during the first three evaluation periods of the base term (based on evaluation by the Government) shall serve as the basis for determining if the Contractor will be granted an award term extension. Any subsequent award term extensions will be determined annually and based on the results of the Government's evaluation of the Contractor's performance. The total contract term shall not exceed 20 years.

- (2) The ATDO will unilaterally determine if the Contractor: (i) meets eligibility requirements to earn an award term extension; and (ii) has earned additional contract term.
- (3) The amount of award term that may be earned by the Contractor for the first award term extension is thirty-six (36) months. The amount of award term that may be earned by the Contractor for each subsequent award term extension is twelve (12) months.
- (4) If the ATDO determines that the Contractor has earned additional award term, the Contracting Officer will unilaterally modify the contract to extend the term of the contract.
- (5) If the Contractor fails either (i) to earn the first award term extension, or (ii) to earn the award term extension three times, the Contractor becomes ineligible to earn any additional award term extension(s) under the contract.

(d) Conditions.

- (1) This clause does not confer any other rights to the Contractor other than the right to earn additional contract term as specified herein. Any additional contract term awarded to the Contractor under this clause is subject to all of the other terms and conditions of this Contract. Should the terms of this clause conflict with the terms of any other clause under this Contract, then this clause shall be subordinate.
- (2) The Contractor's earning of an award term extension and the Contractor's right to perform an earned award term extension are subject to:
 - (i) The Government's continuing need for the contract's work;
 - (ii) The availability of funds; and
 - (iii) Mutual agreement by the parties to contract modifications that incorporate changes to, or new, DOE policy or contract clauses.
- (3) The Government may make unilateral changes to the Performance Evaluation and Measurement Plan (or equivalent document) prior to the start of an award term evaluation period.
- (4) The Contractor is not entitled to any cancellation charges, termination costs, equitable adjustments, or any other compensation due to the Contractor failing to earn or forfeiting award term.
- (5) A significant failure of Contractor's management controls as defined in the Section I Clause, DEAR 970.5203-1, "Management Controls," or a first degree performance failure as defined in the Section I Clause, DEAR 970.5215-3, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts," may result in the forfeiture of up to three years of earned award term. This potential forfeiture is in addition to other remedies provided for in the contract.

F.3 FAR 52.242-15 Stop Work Order (AUG 1989) (Alternate I) (APR 1984)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either --
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if --
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F.4 Stop Work and Shutdown Authority

Section F Clause, FAR 52.242-15, "Stop Work Order," allows only the Contracting Officer to stop work or shut down facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work due to situations where the Contractor's acts or failures to act present an imminent danger to the environment or health and safety of

employees or the public, any DOE employee may exercise the stop work authority contemplated in Section I Clause, DEAR 970.5223-1, "Integration of Environment, Safety, and Health Into Work Planning and Execution."

F.5 Principal Place of Performance

The principal place of contract performance is at the site of the Thomas Jefferson National Accelerator Facility (TJNAF) (otherwise known as Jefferson Lab) in Newport News, Virginia.

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SECTION G

CONTRACT ADMINISTRATION DATA

G.1 DOE Contracting Officer

For the definition of Contracting Officer see Section I Clause, FAR 52.202-1, "Definitions." The Contracting Officer is the only individual who has the authority on behalf of DOE to take the following actions under the contract:

- (a) Assign additional work within the general scope of the Statement of Work of the contract;
- (b) Issue a change as defined in Section I Clause, DEAR 970.5243-1, "Changes;"
- (c) Change any of the expressed terms, conditions or specifications of the contract;
- (d) Accept non-conforming work; or
- (e) Waive any requirement of this contract.

G.2 DOE Contracting Officer's Representative(s) (COR)

Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative(s) in accordance with Section I Clause, DEAR 952.242-70, "Technical Direction." Any change in any DOE COR may be made administratively by letter from the Contracting Officer consistent with the Section I Clause.

G.3 Contract Administration

The contract will be administered by:

U.S. Department of Energy
Thomas Jefferson Site Office (TJSO)
12000 Jefferson Avenue
Newport News, Virginia 23606

Written communications shall make reference to the contract number and shall be mailed to the above address except for correspondence regarding patent or intellectual property related matters which should be addressed to:

U.S. Department of Energy
Oak Ridge Office
Office of Chief Counsel (CC-10) – Intellectual Property
200 Administration Road
Oak Ridge, TN 37830

Information copies of patent related correspondence should also be sent to the Contracting Officer.

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 Laboratory Facilities

DOE agrees to furnish and make available to the Contractor, for its use in performing the work under this contract, the TJNAF facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Thomas Jefferson National Accelerator Facility site in Newport News, Virginia; and
- (b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.
- (c) DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor shall not be unreasonably interfered. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

H.2 Long-range Planning, Program Development and Budgetary Administration

- (a) Basic considerations. Throughout the process of planning, and budget development and approval, the Contractor and DOE 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) Business planning. It is the intent of the Contractor and DOE to develop a Business Plan covering a five-year period, which will be updated annually. Development of the Business Plan is a component of the strategic planning process by which the Parties reach agreement on the general types and levels of activity which will be conducted at TJNAF for the period covered by the plan. Among other items, the Plan shall include a clear statement of the primary mission of TJNAF as it relates to the lead Office of Science program office(s), a clear statement of secondary missions to support other DOE program offices and other Federal agencies, and a five-year plan identifying research, facilities and resource requirements, necessary to fulfill the primary and secondary missions. The Business Plan approved by the TJSO Site Manager provides guidance to the Contractor for long-range planning of TJNAF programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at TJNAF.
- (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.3 Work Authorization

- (a) Work programs shall be proposed by the Contractor and reviewed and approved by DOE in accordance with applicable DOE directives and this contract and shall constitute work to be performed under this Contract consistent with the Statement of Work during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. It is understood that the nature of the research and development work under this Contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.
- (b) Due to the critical character of the work from the standpoint of national significance, very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.
- (c)
 - (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE's overall program goals, scientific and technological problems, and its current long range objectives. The Contractor shall propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, shall either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear to be of potential importance.
 - (2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all other program needs.
 - (3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless modified by DOE.
- (d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE shall utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the TJNAF Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice:

- (1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for TJNAF contained in the President's Budget, with Program assumptions and guidance, which the Contractor is expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.
 - (2) Prior to April 1 (or such other date as may be agreed upon), the Contractor shall submit to DOE for approval a comprehensive work program for the next two fiscal years, with a description of the current work program. The Contractor shall also submit a budget estimate for the next two fiscal years, with a revised budget estimate for the current fiscal year.
 - (3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.
- (e)
- (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to Section I clause, DEAR 950.5243-1 "Changes."
 - (2) The Work Authorizations/Annual Program Letters specify the funds available for work under the Contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters.
 - (3) Additional programs and projects to be conducted at TJNAF within the scope of the Contract may be established by agreement between the DOE and the Contractor.
- (f) A Contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further Contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the Contract. DOE agrees to use its

best efforts to provide stable funding in support of the Contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.

- (g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.
- (h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract.
 - (1) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this Contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

H.4 Advance Understandings Regarding Additional Items of Allowable and Unallowable Costs and Other Matters

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

- (a) ITEMS OF ALLOWABLE COSTS:
 - (1) Personnel costs in accordance with Section J, Appendix A, attached to this contract.
 - (2) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer.
 - (3) Notwithstanding the provisions of FAR cost principle 31.205-44 (i), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
 - (4) Notwithstanding the provisions of FAR cost principle 31.205-44 (i),

payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

- (5) Expenditures by the Contractor to reimburse other employers for payments (including, but not limited to, salaries) to or for the benefit of their employees loaned to the Contractor for and engaged in the performance of the Contractor's undertaking hereunder.
 - (6) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.
- (b) ITEMS OF UNALLOWABLE COSTS:
- (2) Premium Pay for wearing radiation-measuring devices for TJNAF and all-tier cost-type subcontract employees.
 - (3) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the Contracting Officer.

H.5 Facilities Capital Cost of Money

The Request for Proposals for this contract did not require a Cost and Fee proposal in which facilities capital cost of money would apply. Therefore, Section I clause, FAR 52.215-17, "Waiver of Facilities Capital Cost of Money" is included in this contract. However, if during the performance of this contract the Contractor elects to claim facilities capital cost of money as an allowable cost, the Contractor shall submit for approval of the Contracting Officer, a proposal for each specific project, including Form CASB-CMF which shows the calculation of the proposed amount (See FAR 31.205-10).

H.6 Withdrawal of Work

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another contractor or performed by Government employees.
- (b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the contractor; or (4) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- (c) If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the Contract Clause titled "Termination."
- (d) If any work is withdrawn by the Contracting Officer, the contractor agrees to

fully cooperate with the new performing entity and to provide whatever support is required.

- (e) DOE has identified three areas for direct federal contracts with small businesses: (1) janitorial services; (2) landscaping services; and (3) pest control services. These services are currently provided to TJNAF under subcontracts and will be awarded in the future by DOE as the current subcontracts expire.

H.7 Privacy Act Records

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

Personnel Records of Former Contractor Employees (DOE-5)

Government Motor Vehicle Operator Records (DOE-32)

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

Personnel Radiation Exposure Records (DOE-35)

Statistical Analysis Using Personnel Security Questionnaires (Health and Mortality Studies) (DOE-36)

Occupational and Industrial Accident Records (DOE-38)

Personnel Security Clearance Files (DOE-43)

Personnel Assurance Program Records (DOE-50)

Employee and Visitor Access Control Records (DOE-51)

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

Physical Fitness Test Records (DOE-77)

Epidemiologic and Other Health Studies, Surveys, and Surveillances (DOE-88)

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

If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974 and 10 CFR 1008, the Contracting

Officer, or designee, shall so notify the Contractor, in writing, and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The Parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

H.8 Additional Definitions

- (a) With respect to Section H clause , "Limitation on Liability," Section I clause, DEAR 970.5227-10, "Patent Rights – Management and Operating Contracts, Non-Profit Organization or Small Business Firm Contractor," and Section I clause, DEAR 970.5245-1, "Property (Alternate I)," the term "nonprofit Contractor" means –
- (1) a university or other institution of higher education,
 - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code, or
 - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation.
- (b) "Contractor" means the Offeror as specified in Block 15A of Standard Form (SF) 33 for this contract.
- (c) "DOE" means the Department of Energy, "FERC" means the Federal Energy Regulatory Commission, and "NNSA" means the National Nuclear Security Administration.
- (d) "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (e) "Government" means the Government of the United States of America as represented by the DOE.
- (f) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (g) "Joint appointees" means a university, tenure-track faculty member selected for a permanent joint appointment with TJNAF via an international search by a joint University-Laboratory search committee. The joint appointment is initiated and covered by a Memorandum of Understanding (MOU) with TJNAF and the institution. In exchange for these services, TJNAF reimburses the universities through a subcontract with the institution.

- (h) "Laboratory" means the Thomas Jefferson National Accelerator Facility (TJNAF) composed of Government-owned buildings and facilities together with the necessary utilities, now existing or hereafter to be acquired, constructed and equipped, most of which are or will be situated on the Government-leased plot or plots of land (also referred to as the "Laboratory Site") at Newport News, Virginia.
- (i) "Research" means work toward increasing knowledge in science, attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and attempts to advance the state of the art in these issues.
- (j) "Senior Procurement Executive" means, for DOE:
 - Department of Energy – Director, Office of Procurement and Assistance Management, DOE;
 - National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and
 - Federal Energy Regulatory Commission – Chairman, FERC.
- (k) "Someone acting as the Laboratory Director" means the person appointed as Laboratory Director; Deputy Laboratory Director(s) acting in the absence of the Laboratory Director; or a person specified, in writing, to have authority to act in the absence of the Laboratory Director and Deputy Laboratory Director(s).
- (l) "TJNAF" or "Jefferson Lab" means the Thomas Jefferson National Accelerator Facility in Newport News, Virginia which is also referred to as "the Laboratory".
- (m) "TJSO" means the DOE Office of Science, Thomas Jefferson Site Office.
- (n) "User Facility" in reference to TJNAF means an open laboratory for unclassified basic research, which serves the international scientific community. The research program is recommended to the Laboratory Director by the Program Advisory Committee (PAC) from written proposals submitted for international research collaborations. The PAC, composed of leading scientists, evaluates the research proposals following oral presentations by collaborating spokespersons, and the basis of scientific merit, the suitability of the research for TJNAF, and the qualifications of the research collaborators.

H.9 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 Section I clause, 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 shall assist the Contracting Officer in developing a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare Standard Form (SF)-98 and SF 98A "Notice of Intention to Make a Service Contract" and forward it to the Contracting Officer or his designee to obtain a wage determination.

H.10 Walsh-Healey 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-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

H.11 Standards of Contractor Performance Evaluation

- (a) Use of objective standards of performance, self-assessment and performance evaluation:
- (1) The Contractor will utilize a comprehensive performance-based management approach for overall TJNAF management. The performance-based management approach will include the use of objective performance goals and indicators, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of TJNAF.
 - (2) The process described within Section J, Appendix B, "Performance Evaluation and Measurement Plan" (PEMP) will be utilized to evaluate the Contractor's performance in the management of TJNAF. The evaluation process described in Section J, Appendix B will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.
 - (3) The Contractor shall conduct an ongoing self-assessment process as the principal means of determining its compliance with the Contract SOW and performance indicators identified within Section J, Appendix B. To assist 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.

- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against Section J, Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end, and a formal self-evaluation report to the DOE at year-end. Specific due dates and formats for the above-mentioned briefings and reports shall be agreed to by the Laboratory Director and the DOE TJSO Manager. In addition, the year-end report shall provide:
 - (i) an overall summary of performance for the performance period;
 - (ii) proposed performance ratings for each PEMP element and TJNAF overall; and
 - (iii) a summary of key strengths and opportunities for improvement.
- (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Science, through the TJSO Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
- (6) The Contracting Officer shall annually provide a written assessment of the Contractor's performance, which shall be based upon the process described in Section J, Appendix B. The performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within the Section J, Appendix B that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General, Government Accountability Office, Defense Contract Audit Agency, etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. With exception of "for cause" reviews, the TJSO anticipates conducting no more than one management and operations review per year. The on-site portion of such reviews will normally last no more than two weeks. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent or no review of the functional area. Conversely, marginal performance or "for cause" situations may result in

more frequent reviews.

(b) Standards of performance measure review:

- (1) The PEMP elements (goals, objectives, performance indicators, and expected levels of performance) contained in Section J, Appendix B will be reviewed annually and modified upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, performance indicators, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing goals, objectives, performance indicators, and expected levels of performance. It is expected that the goals, objectives, performance indicators, and expected levels of performance will be modified as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
- (2) Failure to include an objective or performance indicator in Section J, Appendix B does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she shall notify the Contractor, in writing, of the intended decision ten days prior to issuance.

CLAUSE H.12 SHALL APPLY IF THE CONTRACTOR IS A NON-PROFIT ORGANIZATION

H.12 Limitation on Liability for Non-Profit Organizations

- (a) The Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations shall only apply to obligations the Contractor has assumed pursuant to the following clauses:
 - (1) Section I clause, DEAR 970.5245-1, "Property," paragraph (f)(1)(i)(C);
 - (2) Section I clause, DEAR 970.5228-1, "Insurance-Litigation and Claims," (h), with respect to prudent business judgment only; and
 - (3) Section I clause, DEAR 970.5228-1, "Insurance-Litigation and Claims," (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in Section I clause, DEAR 970.5245-1, "Property."
- (b) The Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual limitation which will apply shall be based on the fiscal year in which

the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

H.13 Intellectual and Scientific Freedom

- (a) The Parties recognize the importance of fostering an atmosphere at TJNAF conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to important national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at TJNAF and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of the scientific, engineering, and technical work performed by TJNAF personnel.
- (c) In order to further the goals of TJNAF and the national interest, the scientific and engineering personnel at TJNAF shall be accorded the rights of publication or other dissemination of research, and participation in open debate and in scientific, educational, or professional meetings or conferences, subject to the limitations included in technology transfer agreements and such other limitations as may be required by the terms of this Contract. Nothing in this clause is intended to alter the obligations of the Parties to protect classified or unclassified controlled nuclear information as provided by law.
- (d) Nothing in Section I clause, DEAR 952.204-75, "Public Affairs," is intended to limit the rights of the Contractor or its employees to publicize and to accurately state the results of its scientific research.

H.14 Notice Regarding the Purchase of American-made Equipment and Products - Sense of Congress

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

H.15 Application of DOE Contractor Requirements Documents

- (a) Performance: The Contractor shall perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as Section J, Appendix E, until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.
- (b) Laws and Regulations Excepted: The process described in this clause shall

not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.

- (c) Deviation Processes in Existing Orders: This clause does not preclude the use of deviation processes provided for in existing DOE directives.
- (d) Proposal of Alternative: The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor's proposal.
- (e) Action of the Contracting Officer: The Contracting Officer shall within sixty (60) days:
 - (1) deny application of the proposed alternative;
 - (2) approve the proposed alternative, with conditions or revisions;
 - (3) approve the proposed alternative; or
 - (4) provide a date by which a decision will be made (not to exceed an additional 60 days).
- (f) Implementation and Evaluation of Performance: Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.
- (g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not listed in Appendix E or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within thirty (30) calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative

proposal is not submitted by the Contractor within the thirty (30) calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Appendix E. The Contractor and the Contractor Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.

- (h) Annual Certification. On an annual basis, the Contractor through an officer at a level above the Laboratory Director shall submit a certification to the Contracting Officer that the system of management controls, including all systems revised in accordance with this clause, is adequate to assure that the objectives of the system are being accomplished and that the system and controls are effective and efficient.
- (i) Deficiency and Remedial Action. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the CRD.

H.16 External Regulation

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of TJNAF facilities, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, and/or State and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

H.17 Guarantee(s) of Performance

The Contractor is required by other provisions of this contract to form a separate corporate or other legal entity. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity: (1) shall guarantee performance as evidenced by the Performance Guarantee Agreement(s) incorporated in the contract in Section J, Appendix G; and (2) shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement 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.18 Workforce Transition, Contractor Compensation, Benefits and Pension

- (a) Employee Retention: The Contractor shall offer employment to all transitioning employees consistent with their present appointment. Transitioning employees shall include all predecessor contractor employees, except predecessor contractor Key Personnel, who, as of the date of contract award, are in good standing and have one of the following appointments: (1) full or part-time schedule with no pre-planned separation date; (2) full or part-time with a pre-planned separation date that exceeds 91 days; or (3) hired for 90 days or less. The Contractor may offer employment to predecessor contractor Key Personnel, at the Contractor's sole discretion. Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment there is just cause, or it is otherwise appropriate to do so based on the employee's performance or conduct.
- (b) Employee Pay and Benefits:
- (1) Incumbent employees are the employees who are on the regular payroll(s) of the incumbent contractor(s) at the time that the responsibility for contract performance is assumed by the successor contractor.
 - (2) Non-incumbent employees are new hires, i.e., employees hired by the contractor after the contractor assumes responsibility for contract performance.
 - (3) The contractor shall provide equivalent pay and comparable benefits to incumbent employees. Incumbent employees shall remain in their existing pension plans pursuant to pension plan eligibility requirements and applicable law. 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. Comparability of the total benefit package shall be determined by the contracting officer in his/her sole discretion.
 - (4) All new (non-incumbent) employees shall receive an overall benefit package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the contractor recruits its employees. Contractors shall develop and implement welfare benefit programs that meet the test of allowability established by FAR31.205-6 as supplemented by DEAR 970.3102-5-6.
 - (5) Cost reimbursement for pension and other benefit programs sponsored by the contractor will be based on Contracting Officer approval of contractor actions pursuant to an approved "Employee Benefits Value Study" and an Employee benefits Cost Survey Comparison." No presumption of allowability will exist when the contractor implements a new benefit plan or makes changes to existing benefit plans until the contracting officer makes a determination of cost allowability for reimbursement for new or changes benefit plans.

- (6) The contractor shall submit within 30 days of Contract award, a *Human Resources Compensation Plan* demonstrating how the contractor will comply with the requirements of this contract. The *Human Resources 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.
- (7) The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with FAR 31.205-6, and DEAR 970.3102-05-6, "Compensation for Personal Services," as applied to the DOE-approved standards in Section J, Appendix A. The Contractor's compensation system and methods shall be in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, fully documented, consistently applied, and acceptable to DOE.

Until DOE has certified the Contractor's compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the contract:

- (i) Any additional Compensation System self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Compensation System.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions for the Key Personnel including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

Upon certification of the Contractor's Compensation System, Contracting Officer approval of individual compensation actions will be required only for the Laboratory Director, Deputy Director(s), if any, and those other first-tier reports to the aforementioned positions, as identified by the Contracting Officer.

- (8) Severance pay benefits are 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.

Service Credit for purposes of determining severance pay does not include any period of prior service at a DOE facility for which severance pay has been previously paid.

- (9) The Contractor shall provide the Contracting Officer with the following reports with respect to salary and benefits:
 - (i) 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.
 - (ii) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.
 - (iii) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.
 - (iv) A Self-Assessment of the total compensation program.
- (10) DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of Contractor self-assessments of compensation system performance, or third party expert review.
- (c) Pension and Other Benefit Programs: Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of award or extension, and prior to implementation of any benefit change, the Contractor shall submit (1) and (2) below:
 - (1) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post retirement benefits 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 for nationally recognized and Contracting Officer approved survey sources and,
 - (2) An Employee Benefits Cost Comparison (cost comparison) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee

Benefits Cost Survey or other Contracting Officer approved broad based national survey.

This information shall be submitted to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor's documented program plan and are deemed allowable pursuant to FAR 31.205-6 as supplemented by DEAR 970.3102-05-6.

- (3) When net benefit value and/or per capita cost of the total benefits package exceed the comparator group by more than 5 percent, submit a corrective action plan, when requested by the Contracting Officer.
 - (4) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
 - (5) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in subparagraph (d)(2).
 - (6) Submit the Report on Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 15 of the current calendar year.
- (d) Pension plans: The Contractor shall establish or maintain a separate pension plan(s), distinct from any corporate or other pension plan, meeting the requirements of the IRC and ERISA, that recognizes service credit earned at TJNAF.
- (1) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with law and regulation.
 - (2) Each pension plan shall cover only Contractor employees working for TJNAF and shall stand alone as a separate pension plan distinct from a Contractor's corporate or other pension plan.
 - (3) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following within nine months of the last day of the current pension plan year.
 - (i) Copies of IRS forms 5500 with schedules;
 - (ii) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
 - (4) The Contractor shall submit the information required under (i) and (ii),

below, as applicable, prior to the adoption of any changes to the pension plan, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (i) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value must be provided; and,
 - (ii) The Contractor shall obtain the advance written approval of the Contracting Officer for any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
- (5) At contract expiration or termination as a part of the transition to another entity awarded the management and operating contract, the Contractor shall transfer sponsorship of the site-specific pension plan(s) covering employees at TJNAF, as directed by DOE.
- (6) Pension Plan Terminations. The Contractor shall not terminate any pension plan (commingled or site-specific) without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.
- (7) Post-Contract Responsibilities for Pension and Benefit Plans. If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to the clause of the contract Section I clause, FAR 52.249-6, "Termination," the following actions shall occur:
- (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
 - (ii) During the final 12 months of this contract, if the parties have not reached agreement on these matters, the Contracting Officer shall provide written direction regarding the provision of post-contract pension and welfare benefits.
 - (iii) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare

benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.

(e) Labor Relations:

- (1) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
 - (2) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (f) Section H Clause, "Workers' Compensation," and Section J, Appendix A, are adopted for the exclusive benefit and convenience of the parties hereto; nothing contained herein shall be construed as conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party."

H.19 Contractor Acceptance of Notices of Violations or Alleged Violations, Fines, and Penalties

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

H.20 Allocation of Responsibilities for Contractor Environmental Compliance Activities

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

Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.

- (b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the “Parties”, for implementing the environmental requirements at facilities within the scope of the contract. In this Clause, the term “environmental requirements” means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, compliance agreements, permits, and licenses.
- (c)
- (1) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.
 - (2) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

H.21 Workers' Compensation

- (a) The Contractor shall maintain workers' compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the Contracting Officer and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.
- (b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the Contracting Officer.
- (c) The Contractor shall submit to the Contracting Officer an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the Contracting Officer. The Contractor's self evaluation shall discuss:
 - (1) periodic audits of claims servicing units; and,
 - (2) the reasonableness of self-insurance reserves and methods and assumptions used to closeout claims or losses to present value.
- (d) The Contractor, if it is a state institution covered under a corporate workers' compensation arrangement, shall provide the Contracting Officer with a copy of the account statements including deposits, earnings, payments, losses, and administrative fees by the Contractor's financial institution on no less than an annual basis.
- (e) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

H.22 Performance-Based Management and Oversight

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

stewardship and operational performance. Routine DOE oversight of Contractor performance will be conducted at the systems level.

- (b) The performance-based management system shall be the primary vehicle for addressing issues associated with performance expectations. In the event of a substantive performance shortfall in any area, the appropriate improvement expectations and targets will be incorporated into the PEMP and tracked through self-assessment and independent oversight, as appropriate.
- (c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external regulators in assessing Contract compliance. DOE oversight will be achieved through periodic assessments at the management system level, including review of Contractor self-assessments and assessments by independent third parties.

H.23 Lobbying Restriction (Energy and Water Act, 2005)

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

H.24 Epidemiological Studies of Workers at the Site

- (a) If requested by DOE, the Contractor shall cooperate in the conduct of epidemiological studies of workers at the contract site to include health related programs and projects, or public health activities required by law, performed by personnel, Contractor personnel, grantees and cooperative agreement participants of the Department of Health and Human Services (HHS), pursuant to a Memorandum of Understanding between DOE and HHS, or those performed by the DOE Office of Environment, Safety and Health, its Contractors, grantees, participants in cooperative agreements, and collaborating researchers. The conduct of these studies requires access by researchers to personal information about workers including historical and current data on work assignments and duties, medical history, and exposure to radiation, toxins, and other occupational hazards. Access to Contractor-owned records containing personal information is governed by Section I clause, DEAR 970.5204-3, "Access to and Ownership of Records." The studies may also require access by researchers to workers for personal interviews during normal work hours. The Contractor understands that its cooperation in such studies is an integral part of addressing the health and safety of workers at the site and that it may be reimbursed for reasonable costs associated with assisting the various agencies. The Contractor shall identify a point of contact for coordinating this work and for assuring that responses are timely, and shall submit to the Contracting Officer for approval procedures for liaison with external researchers carrying out such work, when requested.

- (b) Nothing in this clause shall relieve personnel performing epidemiological studies at the site from observing applicable federal and state laws, regulations and directives governing the conduct of human subjects research. It is acknowledged that the Contractor, as the custodian and/or owner of records maintained at the site, has certain contractual and other legal obligations to ensure compliance with such laws, regulations and directives.

H.25 Labor Relations

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

The Contractor is authorized to enter into and administer its labor agreements in accordance with their negotiated terms.

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

The Contractor will furnish reports as may be required from time to time by the Contracting Officer.

H.26 Defense and Indemnification of Employees

- (a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this Contract. Except for defense costs made unallowable by Section I clause, DEAR 970.5232-2, "Payments and Advances," or the Major Fraud Act (41 U.S.C. §256(k)), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I clause DEAR 970.5228-1, "Insurance-Litigation and Claims."
- (b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.
- (c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.

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

H.27 Disposal of Real Property

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

H.28 Activities During Contract Transition

- (a) The Contractor shall commence the following Transition Activities as soon as possible after the award of the contract and complete the following activities (to the extent identified in the Contractor's proposal) within sixty (60) days, after contract award, except as otherwise authorized by the Contracting Officer. After completion of these activities, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for TJNAF. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for TJNAF, effective 12:01 A.M., the next day.
- (1) Scientific Research. Complete the activities that will allow the Contractor to assume control of TJNAF's scientific programs and facilities.
 - (2) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems (e.g., Finance, Property, Procurement, Information Management, Life Cycle Asset Management, Human Resources) to assure system adequacy.
 - (3) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., subcontracts, purchase orders, etc.) to be assigned to the Contractor by SURA, or otherwise taken over by the Contractor. Initiate the assumption of said responsibility with the objective of being fifty percent (50%) complete by the end of the transition period.

- (4) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with SURA, in accordance with subparagraph (i)(2)(ii) of Section I clause, DEAR 970.5245-1, "Property," and with overall guidance provided by the Contracting Officer.
 - (5) Litigation Management. Contractor shall consult with DOE and SURA to determine whether the Contractor should assume some level of management of any litigation resulting from TJNAF operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties, relevance of retrospective insurance, and DOE litigation management guidelines.
 - (6) Human Resources. The Contractor shall conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval that identifies the status of critical-skills and the strategy for the recruitment and/or retention of those skills. The Plan shall specifically address the issues set forth below.
 - (i) Transition of "Joint Appointees" with SURA and/or any other educational institutions; how said "Joint Appointees" will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with SURA and/or other educational institutions.
 - (ii) Developing appropriate incentives, including an incentive compensation strategy for "Key Personnel," other management personnel, and other employees, as appropriate.
 - (iii) The terms and conditions of employment that will be applicable to the bargaining unit workforce, demonstrating consistency with the respective collective bargaining agreements previously providing coverage.
 - (iv) Documenting its strategy for meeting the requirements identified in Section H clause, "Workforce Transition, Contractor Compensation, Benefit and Pensions."
 - (v) A framework for the pension and health/welfare benefits applicable to the transferring workforce, with an assessment of the benefit value relative to those provided by SURA and an investment strategy for the management of transferred assets. Should benefits be provided through an existing plan, the Contractor will demonstrate its ability to effectively manage benefits by submitting to the Contracting Officer the most recent actuarial valuations, investment plans, benefit value studies, and Cost of Risk Surveys.
- (b) Except as provided in paragraph (c) below, or as otherwise specifically agreed to by the Contractor and the Contracting Officer, all of the provisions

of this contract shall apply to the Contractor's performance of Transition Activities.

- (c) The following contract Clauses or portions thereof as noted below do not apply to the Contractor's Transition Activities:
- (1) Section C clause, "Performance-Based Statement of Work;"
 - (2) Section F clause, "Period of Performance", except that pertaining to the Transition Period;
 - (3) Section H clause, "Laboratory Facilities;"
 - (4) Section H clause, "Long-range Planning, Program Development and Budgetary Administration;"
 - (5) Section H clause, "Standards of Contractor Performance Evaluation;"
 - (6) Section H clause, "Limitation on Liability for Non-Profit Organizations;"
 - (7) Section H clause, "Contractor Acceptance of Notices of Violations or Alleged Violations, Fines, and Penalties;"
 - (8) Section H clause, "Allocation of Responsibilities for Contractor Environmental Compliance Activities;"
 - (9) Section I clause, FAR 52.208-8, "Required Sources for Helium and Helium Usage Data;"
 - (10) Section I clause, "DEAR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount;"
 - (11) Section I clause, "DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts;"
 - (12) Section I clause, "DEAR 970.5217-1, Work for Others Program (Non-DOE Funded Work);"
 - (13) Section I clause, "DEAR 970.5231-4, Preexisting Conditions (if applicable);"
 - (14) Section I clause, "DEAR 970.5232-6, Work for Others Funding Authorization;"
 - (15) Section J, Appendix B, "Performance Evaluation and Measurement Plan."
- (d) The Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor's "Key Personnel," as described in its Cost and Fee Proposal, at an allowable cost not to exceed \$452,000. In the event the actual cost of said activities exceeds such amount, including

any costs for relocation of Contractor's "Key Personnel" incurred after the conclusion of the transition period, Contractor agrees that it will be solely responsible for costs greater than said amount. Reimbursement for the transition costs will be made through the use of invoices (Standard Form 1034). Payment instructions for the preparation of these invoices will be provided to the Contractor after contract award.

H.29 Special Financial Institution Account Agreement

The Contractor shall provide in accordance with DOE requirements, a Special Financial Institution Account Agreement which shall be in place prior to assuming full responsibility for the performance of the contract. This agreement shall be included as Section J, Appendix C.

H.30 Agreements and Commitments

- (a) The commitments proposed by the Contractor as accepted by the Government are incorporated into the contract as set forth below:
- (1) Support for TJNAF: Provide \$500,000 per year for the five-year base award period to establish a fund to leverage specific programs, initiatives, and activities at TJNAF that further scientific outreach and enhance the laboratory's scientific and technology programs;
 - (2) Relations and Outreach Support: Provide \$250,000 per year for the five-year base award period to manage and support a Relations and Outreach Program that supports science in general and TJNAF and its related and complementary activities in particular;
 - (3) Applied Insight: Provide a suite of technology tools and businesses management processes that integrate laboratory management data and provide DOE 24/7 insight into laboratory performance through a secure web-based portal; and
 - (4) Access to Skillport: Provide distance learning for laboratory employees in topics related to efficient and effective management of Government contracts and resources.
- (b) Costs incurred by the Contractor in providing any of these commitments are expressly unallowable under the contract.

H.31 Equal Opportunity Pre-Award Clearance of Subcontracts

The Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$10 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

H.32 Integration of TJNAF Financial System

DOE reserves the unilateral right to direct the Contractor to cooperate and assist in integrating TJNAF's Financial Systems into DOE's Financial Systems should DOE determine that it is in its best interest. If DOE exercises this right, the Contracting Officer may unilaterally modify the contract to include DEAR clauses,

DEAR 970.5232-2, "Payments and Advances (Alternate III)" and DEAR 970.5232-8, "Integrated Accounting."

H.33 Cost Management Reports

So long as the TJNAF Contractor remains a non-integrated contractor, the contractor's financial management system shall be linked to DOE's accounts through the use of the U. S. Department of Energy Cost Management Report (DOE form 533M) which shall be provided to the Contracting Officer on a monthly basis and fiscal year basis in accordance with the requirements imposed by the Contracting Officer pursuant to Section I clause, DEAR 970.5204-2, "Laws, Regulations, and DOE Directives."

H.34 Environmental Certifications

In connection with environmental permit applications and other environmental documentation required to be submitted by DOE to local jurisdictions, agencies of the Commonwealth of Virginia, or the United States Environmental Protection Agency with respect to TJNAF, a DOE official is often required by law and/or regulation to certify that the information set forth in a particular document is accurate and complete, and that specific protocols or standards were followed. However, the parties recognize that the information contained in such documents is generated for DOE by the Contractor, either directly or through subcontractors. Therefore, to assist the DOE official in making such certification, an appropriate Contractor official shall confirm to DOE that in regard to documents prepared by the Contractor, the information contained in the particular document is accurate and complete and that any protocols required by the respective regulatory agencies have been observed. In regard to documents prepared by subcontractors or others, the Contractor shall confirm that an appropriate official has reviewed the document for accuracy and completeness and for the subcontractor's certification that protocols required by regulatory agencies have been observed.

H.35 Safeguards and Security Requirements

- (a) Facility Importance Rating. DOE has officially determined TJNAF's "facility importance rating" to be "C – Category IV, Other Nuclear Material."
- (b) Responsibility. It is the Contractor's duty to protect all DOE property and persons on site. The Contractor shall, in accordance with applicable DOE security regulations and requirements, be responsible for protecting TJNAF against sabotage, loss and theft of property in the Contractor's possession in connection with the performance of work under this contract. The Contractor shall also be responsible for implementing DOE requirements as directed by the Contracting Officer and taking other actions that may be determined by DOE and the Contractor to be reasonable and necessary to protect the safety of the site population from terrorism or acts of violence.
- (c) Regulations. The Contractor shall comply with all security regulations and requirements applicable to property protection facilities of DOE and for the administration of security clearances for Contractor personnel.

- (d) Directives. The Contractor shall comply with all applicable DOE Directives specified in Section J, Appendix E, to this contract and/or imposed by the Contracting Officer pursuant to Section I clause, DEAR 970.5204-2, "Laws, Regulations, and DOE Directives."

H.36 Classified Research and Information

- (a) It is the intent of both DOE and the Contractor that TJNAF be a research facility whose primary purpose is to provide a state of the art physics laboratory that is user friendly to the national and international scientific community.
- (b) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or termination of all activities under this contract, said party shall notify the other party accordingly in writing without delay. The Contractor shall promptly inform the Contracting Officer in writing if and when classified information becomes involved or is expected to become involved in contract performance. The Contracting Officer shall assure that the Contractor is given appropriate instruction for the handling of the classified information. The Contractor agrees to safeguard the information in accordance with DOE's instruction and will transfer it as soon as practicable to the appropriate Government official.
- (c) The Contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's requirements.
- (d) Inasmuch, as TJNAF creates a unique research capability for the United States, the possibility of conducting classified research exists. With prior approval by DOE, TJNAF research facilities may be made available for classified work performed by the Government or its designee provide the appropriate security arrangements are made by the Government.

H.37 Representations, Certifications and Other Statements of the Offeror

The Representations, Certifications and Other Statements of the Offeror, dated January 25, 2006 (and clarified on March 6, 2006), for this contract are, by reference, hereby incorporated and made a part of this contract.

H.38 Modification Authority

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

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

H.39 Small Business Subcontracting Plan

The Small Business Subcontracting Plan submitted by the Contractor for this contract, and approved in writing by the Contracting Officer, is a material part of this contract and is incorporated by reference and has the same force and effect as if attached hereto.

H.40 Confidentiality of Information

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in the public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies; and
 - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all appropriate subcontracts.

H.41 Age Discrimination in Employment

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act “as amended” with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

H.42 Separate Corporate or Other Legal Entity

The work performed under this contract by the Contractor shall be conducted by a separate corporate or other legal entity from its parent company(ies). The separate corporate or other legal entity must be set up solely to perform this contract and shall be totally responsible for all contract activities.

H.43 Responsible Corporate Official

Notwithstanding the provisions of Section H clause, “Guarantee(s) of Performance,” the Government may contact as necessary, the single responsible corporate official identified below, who is at a level above the Contracting Officer 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 to contact.

Name: Christoph Leemann, Ph.D
Position: President, Laboratory Director
Organization: Jefferson Science Associates, LLC (a SURA/CSC Company)
Address: 12050 Jefferson Avenue, Newport News, VA 23606

H.44 Labor Standards for Construction Work

- (a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:
- (1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.
 - (2) Davis-Bacon Act at 52.222-6.
 - (3) Withholding of Funds at 52.222-7.
 - (4) Payrolls and Basic Records at 52.222-8.
 - (5) Apprentices and Trainees at 52.222-9.
 - (6) Compliance with Copeland Act Requirements at 52.222-10.
 - (7) Subcontracts (Labor Standards) at 52.222-11.
 - (8) Contract Termination—Debarment at 52.222-12.
 - (9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.
 - (10) Disputes Concerning Labor Standards at 52.222-14.
 - (11) Certification of Eligibility at 52.222-15.

- (b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.
- (c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

H.45 Compliance with FIPS Pub 201

This contract involves the acquisition of hardware, software, or services related to physical access to Federal premises or electronic authentication or access control to a Federal Agency's computer systems and electronic infrastructure. Any such hardware, software, or services delivered under this contract shall comply with FIPS Pub 201, and FIPS Pub 201 shall take precedence over any conflicting performance requirements of this contract. Should the Contractor find that the statement of work or other specifications of this Contract do not conform to FIPS Pub 201, it shall notify the Contracting Officer of such nonconformance and shall act in accordance with instructions from the Contracting Officer.

H.46 Care of Laboratory Animals

- (a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended. The Contractor shall furnish evidence of such registration to the Contracting Officer.
- (b) The Contractor shall acquire animals used in research and development program from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in paragraph (a) above.
- (c) In the care of any animals used or intended for use in the performance of this contract, the Contractor shall comply with USDA regulations governing animal care and usage, as well as all other relevant local, State, and Federal regulations concerning animal care and usage. In addition, the Contractor will ensure that research will be conducted in a facility that either: (i) has a current National Institutes of Health (NIH) assurance number for animal care and usage, or (ii) is currently accredited for animal care and usage by an appropriate organization such as the American Association for accreditation of Laboratory Animal Care, Inc. (AAALAC), or (iii) has a DOE Assurance Plan Number.

H.47 Electronic Subcontracting Reporting System (OCT 2005)

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

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

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