EUROPEAN UNION
European Structural and Investing Funds
Operational Programme Research,
Development and Education

STRATEGIC PARTNERSHIP PROGRAM AGREEMENT WITH NON-FEDERAL SPONSORS
SPP Agreement L-22545

This Strategic Partnerships Program Agreement ("Agreement") (formerly referred to as "Strategic Partnership Program" or "WFO") is entered into between Lawrence Livermore National Security, LLC (which may be referred to as either "LLNS" or as the "Contractor"), which manages and operates the Lawrence Livermore National Laboratory ("LLNL"), a national security Federally Funded Research and Development Center ("FFRDC"), on behalf of the United States Department of Energy/National Nuclear Security Administration (referred to as "DOE/NNSA" or the "Government") under its prime contract No. DE-AC52-07NA27344 (the "Prime Contract"), and the non-Federal sponsor Institute of Physics of the Czech Academy of Sciences, a public research institution, registered office Na Slovance 2, 182 21 Prague 8, Czech Republic, registration No. 68378271, legally represented by RNDr. Michael Prouza, PhD., director (the "Sponsor"), which owns and operates ELI-Beamlines international laser research facility. Collectively, the Contractor and the Sponsor shall be referred to as the "Parties," or individually as a "Party."

The Initial Term (as defined below in Attachment A, Section II.B) of this Agreement shall be: 54 Months, from the Effective Date, as defined below in Attachment A, Section II.A. The Contractor's initial estimated cost (cost ceiling) for performance is: $18,740,000.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to be bound by: (A) the SPP Terms and Conditions; (B) Intellectual Property Rights; (C) Background Intellectual Property; and (D) Statement of Work (or "SOW"), which are attached and incorporated herein by reference as Attachments A, B, C, and D respectively. Together, this signature page and the Attachments constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, including but not limited to, any Non-Disclosure or other similar agreements relating to the duty of confidence. No amendment to or modification of this Agreement will be binding unless in writing and signed by duly authorized representatives of the Parties. Both Parties acknowledge that this Agreement is being made in the spirit of, but not under, that certain October 23, 2019 Implementing Agreement between the Czech Academy of Sciences and the Department of Energy of the United States of America for Science and Technology Cooperation in Energy and Related Fields.

The Parties have duly executed this Agreement as of the day and year provided below. Each Party represents that the person executing on its behalf has all necessary and appropriate authority to bind that Party to this Agreement.

For: Lawrence Livermore National Security, LLC	For: Institute of Physics of the Czech Academy of Sciences, a public research institution
By:	By:
Name:	Name:.
Title:	Title:

LIST OF ATTACHMENTS:

ATTACHMENT A – SPP TERMS AND CONDITIONS
ATTACHMENT B – INTELLECTUAL PROPERTY RIGHTS
ATTACHMENT C – BACKGROUND INTELLECTUAL PROPERTY
ATTACHMENT D – STATEMENT OF WORK

EUROPEAN UNION
European Structural and Investing Funds
Operational Programme Research,
Development and Education

SPP Agreement L-22545

ATTACHMENT A – SPP TERMS AND CONDITIONS

I. PURPOSE

The purpose of this Agreement is for the Contractor to perform the work set forth in the SOW. The Contractor is performing this work pursuant to DOE/NNSA's SPP and the Contractor's performance under this Agreement is subject to its obligations to the DOE/NNSA under the Prime Contract.

II. TERM OF THE AGREEMENT

A. The effective date ("Effective Date") for this Agreement shall be the latter of: (1) the date on which it is signed by the last of the Parties hereto, (2) the date on which it is approved by NNSA, or (3) the receipt of the advance payment as required below.

B. The initial period of performance shall be the Initial Term, as provided on the signature page, from the Effective Date.

C. The initial period of performance may be extended by mutual written agreement of the Parties.

III. COSTS

A. The Contractor's initial estimated cost to perform its obligations hereunder is provided on the signature page. This cost estimate shall be considered a cost ceiling.

B. The cost ceiling for the Agreement may be changed at any time by mutual written agreement of the Parties.

C. Neither Party has any obligation to continue or complete performance if the Contractor's actual costs exceed the established cost ceiling.

D. The Contractor agrees to provide the Sponsor at least thirty (30) days advance written notice if its actual cost to complete performance will exceed the then-current cost ceiling. Upon such notification, the Sponsor has the right to terminate this Agreement as provided below.

E. The Parties acknowledge that this is a cost-reimbursable type contract. The cost ceiling established under this Agreement is not a firm fixed price.

IV. PAYMENT

At all times during the term of this Agreement, the Sponsor shall provide sufficient funds in advance to fund the Contractor's performance. The Contractor will have no obligation to perform in the absence of adequate advance funding. If the estimated period of performance exceeds ninety (90) days, or the estimated cost exceeds Twenty-Five Thousand Dollars ($25,000), the Sponsor may, with the Contractor's approval, advance funds incrementally. In such a case, the Contractor will initially invoice the Sponsor an amount sufficient to permit the work to proceed for at least One Hundred Twenty (120) days and thereafter invoice the Sponsor monthly so as to maintain

approximately a ninety (90) day period that is funded in advance. Payment will be made directly to the Contractor. Subject to the forgoing, for planning purposes only, the Parties may agree upon a payment schedule as provided in the SOW. Sponsor represents that no United States Government federal funds are being used to finance this Agreement.

V. PERSONAL PROPERTY / DELIVERY OF SPECIALLY MANUFACTURED MATERIALS

A. The Parties agree that a purpose of this Agreement is for the Contractor to deliver to the Sponsor those specially manufactured material(s) (i.e., items of tangible personal property) specifically identified in the SOW. The Sponsor represents and warrants that the material(s) to be specially manufactured hereunder cannot be manufactured by any entity other than the Contractor and that the Contractor is a unique source of supply for the specially manufactured material(s). In light of the limited scope of the Agreement, the Parties agree that delivery of the specially manufactured material(s) is not expected to generate new intellectual property capable of protection under Federal law and foreign counterparts, except to the limited extent that delivery of the specially manufactured material(s) is accompanied by written reports, which may be protected, as provided in Attachment B as Sponsor Proprietary Information. Sponsor agrees that it will use the specially manufactured material(s) for the purposes that it has otherwise disclosed to the Contractor. Delivery of the specially manufactured material(s) under this Agreement is not itself a license to any Contractor Background Intellectual Property which may be incorporated into the materials, or utilized in its design, manufacture or production. Access and use of Contractor Background Intellectual Property is described in Attachment C.

B. Except for the specially manufactured material(s) to be delivered to the Sponsor as described in the SOW, should there be any other individual items of personal property or equipment with a value greater than Five Thousand Dollars ($5,000) produced or acquired by the Contractor with the Sponsor's funds under this Agreement, unless specifically stated in the SOW, such other items will be owned by the Sponsor and will be disposed of as directed by the Sponsor at the Sponsor's expense. Unless specifically stated in the SOW, any individual item of personal property, supplies, or equipment having a value of less than Five Thousand Dollars ($5000) produced or acquired under this Agreement will be owned by the Government. No Federal funds provided by the DOE/NNSA will be used to purchase personal property or equipment for this Agreement. Personal property or equipment produced or acquired as part of this Agreement will be accounted for and maintained during the term of the Agreement pursuant to LLNS's standard property management policies and procedures. Sponsor personal property provided to the Contractor for performance under this Agreement which is not consumed in the course of performance will not be returned to the Sponsor, unless otherwise specified in the SOW.

VI. PUBLICATION MATTERS

Either Party may publish Generated Information, as that term is defined in Attachment B. The publishing Party will provide to the other Party for its review, a copy of the proposed publication Ninety (90) days prior to its intended publication. The other Party may request a reasonable delay or request changes in the proposed publication if the proposed publication contains unprotected patentable information, computer software, or Proprietary Information, as that term is defined in Attachment B.

VII. LEGAL NOTICE

The Parties agree that the following legal notice will be affixed to each report furnished to the Sponsor by the Contractor under this Agreement and to any report resulting from this Agreement which may be distributed by the Sponsor to a third party:

"DISCLAIMER

This document may contain research results that are experimental in nature, and neither the United States Government, any agency thereof, Lawrence Livermore National Security, LLC, nor any of its employees makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not constitute or imply an endorsement or recommendation by the U.S. Government or Lawrence Livermore National Security, LLC. The views and opinions of authors expressed herein do not necessarily reflect those of the U.S. Government or Lawrence Livermore National Security, LLC and will not be used for advertising or product endorsement purposes."

VIII. DISCLAIMER & LIMITATION OF LIABILITY

ALL DELIVERABLES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS, DEFECTS, ERRORS OR OMISSIONS. THE SPONSOR ASSUMES ALL RISK ASSOCIATED WITH ITS USE OF ANY DATA OR DELIVERABLES, INCLUDING WITHOUT LIMITATION, ANY RISK RELATING TO THE QUALITY, PERFORMANCE, CONDITIONS OR RESULTS OF THE RESEARCH AND/OR DELIVERY OF THE SPECIALLY MANUFACTURED MATERIAL(S).

THE GOVERNMENT AND THE CONTRACTOR, INCLUDING THE CONTRACTOR'S SUBCONTRACTORS, MAKE NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, FOR ANY PERFORMANCE HEREUNDER, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

IN NO EVENT SHALL THE GOVERNMENT OR THE CONTRACTOR (INCLUDING THE CONTRACTOR'S SUBCONTRACTORS) BE LIABLE TO THE SPONSOR OR ANY THIRD PARTY RELYING UPON THE RESULTS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE DELIVERABLES OR ANY REPORTS DESCRIBING THE RESULTS OF THE RESEARCH, FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES; LOST PROFITS; OR OTHER ECONOMIC LOSS FOR ANY MATTER ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SPONSOR'S TOTAL AGGREGATE RECOVERY FOR ANY DIRECT DAMAGES SHALL BE LIMITED TO THE TOTAL AMOUNT OF FUNDS IT HAS ACTUALLY PAID TO CONTRACTOR HEREUNDER.

Notwithstanding the above, the Contractor shall use reasonable efforts to try to extend standard original manufacturer warranties from third party suppliers for significant equipment so that Sponsor may benefit from such warranties, provided that: (1) there is no expectation that Contractor deviate from its standard purchasing practices in order to secure such warranties; (2) such warranties are likely to be subject to standard third party terms and conditions; and (3) under no circumstances shall Contractor be responsible for attempting to resolve warranty disputes between the Sponsor and the third party suppliers. For purposes of this clause, the term "significant equipment" applies to those specific items which are identified as "significant equipment" in the Statement of Work.

IX. GENERAL INDEMNITY

The Sponsor agrees to defend, indemnify and hold harmless the Government, NNSA, the Contractor, and all persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the Sponsor, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of the Agreement by the Government, NNSA, the Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the Sponsor, and not directly resulting from the fault or negligence of the Government, NNSA, the Contractor, or persons acting on their behalf. The indemnity set forth in this paragraph will apply only if the Sponsor will have been informed as soon and as completely as practical by the Contractor of the action alleging such claim and will have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Contractor will have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible will be made without the Sponsor's consent.

X. PRODUCT LIABILITY INDEMNITY

Except for any liability resulting from any negligent acts or omissions of the Government or the Contractor, the Sponsor agrees to defend, indemnify and hold harmless the Government and the Contractor and all persons acting on their behalf for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Agreement. In respect to this Article, neither the Government nor the Contractor will be considered assignees or licensees of the Sponsor, as a result of reserved Government and Contractor rights. The indemnity set forth in this paragraph will apply only if the Sponsor will have been informed as soon and as completely as practical by the Contractor of the action alleging such claim and will have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Contractor will have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible will be made without the Sponsor's consent.

XI. INTELLECTUAL PROPERTY INDEMNITY - LIMITED

The Sponsor will defend, indemnify and hold harmless the Government and the Contractor and their officers, agents, and employees and all persons acting on their behalf against liability, including costs, for infringement of any U.S. patent, copyright, or other intellectual property arising out of any acts required or directed by the Sponsor to be performed under this Agreement to the extent such acts are not already performed at the facility. Such indemnity will not apply to a claimed infringement that is settled without the consent of the Sponsor unless required by a court

of competent jurisdiction. The indemnity set forth in this paragraph will apply only if the Sponsor will have been informed as soon and as completely as practical by the Contractor of the action alleging such claim and will have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Contractor will have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible will be made without the Sponsor's consent.

XII. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The Sponsor will report to NNSA and the Contractor, promptly and in reasonable written detail, each claim of patent or copyright infringement based on the performance of this Agreement of which the Sponsor has knowledge. The Sponsor will furnish to NNSA and the Contractor, when requested by NNSA or the Contractor, all evidence and information in the possession of the Sponsor pertaining to such claim.

XIII. ASSIGNMENT

This Agreement may not be assigned or transferred by either Party, except as authorized in writing by the other Party to this Agreement, provided: (1) the Contractor may transfer it to NNSA, or its designee, with notice of such transfer to the Sponsor, and the Contractor will have no further responsibilities except for any use and non-disclosure obligations of this Agreement; and (2) the Sponsor may transfer it to The Extreme Light Infrastructure European Research Infrastructure Consortium (ELI-ERIC), but only with advance notice of such transfer to the Contractor, and after approval of the contract assignment by DOE/NNSA.

XIV. SIMILAR OR IDENTICAL SERVICES

The Government and the Contractor will have the right to perform similar or identical services in the SOW for other sponsors as long as the Sponsor's Proprietary Information is not used on behalf of or disclosed to a third party.

XV. EXPORT CONTROL

The Sponsor acknowledges that some of the technical information or technology that is developed under this Agreement may be subject to applicable export control requirements. Each Party is responsible for its own compliance with all applicable laws and regulations, including, but not limited to, compliance with applicable export control requirements.

XVI. FORCE MAJEURE

A delay of performance of an obligation hereunder (except for payment) may be excused until such time as the delayed-Party is able to perform as originally required hereunder if the cause of the delay qualifies as an act of God; act or omission of any government or agency thereof; government shutdown (even if federal funds are not being used to finance this transaction), fire; storm; flood; earthquake; accident; electrical failure; acts of the public enemy; war; rebellion; insurrection; riot; sabotage; invasion; quarantine; restriction; transportation embargoes; or failures or delays in transportation.

XVII. GUEST SITE ACCESS SAFETY AND HEALTH

Guests at the other Party's facilities must complete all applicable site access documents and requirements, including training. Guests shall take all reasonable precautions in activities carried out under this Agreement to protect the safety and health of others and to protect the environment. Guests must comply with all applicable host safety, health, access to information, security and environmental policies. In the event that a guest fails to comply with such host requirements, the host may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of guest's activities at the host's facilities

XVIII – FOREIGN GOVERNMENT TALENT RECRUITMENT PROGRAM

A. Pursuant to DOE Order 486.1A, *Foreign Government Sponsored or Affiliated Activities*, the Sponsor may not permit any of its employees to participate in a Foreign Government Talent Recruitment Program by receiving Compensation from a Foreign Country of Risk while performing research and development activities on-site at LLNL.

B. As of the effective date of this agreement, Sponsor hereby represents, to the best of its knowledge, that none of its employees performing research and development activities within the scope of this agreement on-site at LLNL is engaged in a Foreign Government Talent Recruitment Program by receiving Compensation from a Foreign Country of Risk without the advance written approval from Contractor, or the Government.

C. The Sponsor shall perform reasonable due diligence to ensure compliance with this Article. If, during performance, the Sponsor has reason to believe that one or more of its employees performing on-site work at LLNL is engaged in a Foreign Government Talent Recruitment Program by receiving Compensation from a Foreign Country of Risk, the Sponsor must:

(1) reassign the affected employee so that that individual is no longer working on-site at LLNL, until Contractor makes a determination pursuant to paragraph D. of this Article; and

(2) promptly notify and provide the following information to Contractor:

(i) names of the employee(s);

(ii) name of the foreign country and the names of the suspected Foreign Government Talent Recruitment Program(s);

(iii) the actual or anticipated renumeration or Compensation paid to the employee(s) involved with the suspected Foreign Government Talent Recruitment Program(s); and,

(iv) any other information reasonably requested by LLNS or the U.S. Government.

Contractor may share the information provided with the U.S. Government.

D. The Sponsor agrees to cooperate with Contractor and/or DOE/NNSA and take appropriate actions as directed by Contractor and/or by DOE/NNSA, to ensure that their employees are not participating in a Foreign Government Talent Recruitment Program by receiving Compensation from a Foreign Country at Risk while performing on-site research and development activities at LLNL under this agreement, without the prior written approval from Contractor. Such actions may include, but are not limited to, removing the individual from participating on-site at LLNL facilities, or replacing the individual with someone else who is qualified to perform the work in question who is not participating in a Foreign Government Talent Recruitment Program by receiving Compensation from a Foreign Country at Risk while performing on-site research and development activities at LLNL under this agreement.

E. The following definitions shall apply to this Article.

1. "Compensation" could take many forms including but not limited to cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or any other type of renumeration or consideration, including in-kind compensation.

2. "Foreign Country of Risk" refers to any foreign country determined to be of risk by the U.S. Government, which includes: Russia, Iran, China, and North Korea; and is subject to change.

3. "Foreign Government Talent Recruitment Program" refers to an effort directly or indirectly organized, managed, or funded by a foreign government to recruit science and technology professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position). The term is more fully defined in DOE Order 486.1A, Foreign Government Sponsored or Affiliated Activities, Attachment 2, which is hereby incorporated by reference.

XIX. EXPIRATION AND TERMINATION

A. The Effective Date of this Agreement is as provided in Article II.A. The Initial Term of this Agreement is as otherwise provided in Article II.B. Unless extended as provided in Article II.C, this Agreement will expire at the end of the Initial Term.

B. The Sponsor may terminate this Agreement for convenience at any time, without liability to it (except for the termination costs described below), by providing advance written notice to the Contractor that it intends to terminate this Agreement prior to the then-current expiration date. The effective date of such termination

shall be thirty (30) days after the termination notice is received by the Contractor, unless otherwise agreed upon in writing by the Parties.

C. The Contractor may terminate this Agreement for convenience at any time, without liability to it, if the Contractor determines, after direction from NNSA, that such termination is: (1) in the best interest of the Government, or (2) the Sponsor has failed to advance the funds as otherwise required hereunder. The effective date of such termination by the Contractor shall be as directed by NNSA, or when the funds are exhausted, whichever is earlier.

D. Either Party may terminate this Agreement for cause upon the other Party's material breach. The non-breaching Party shall provide written notice to the breaching Party of its material breach and the efforts that the breaching Party must take in order to cure the default. The breaching Party shall have thirty (30) days to cure its default to the reasonable satisfaction of the non-breaching Party. If, after thirty (30) days, the non-breaching Party is not reasonably satisfied that the breaching Party has effectively cured its default, then the non-breaching Party may terminate this Agreement by providing written notice to the breaching-Party that the Agreement is terminated.

E. Upon expiration or earlier termination of this Agreement, the Sponsor shall be responsible for all costs incurred by the Contractor prior to the effective date of such expiration or termination, as well as all recurring or nonrecurring charges that have been obligated prior to the expiration or termination of the Agreement which cannot reasonably be cancelled or avoided; but in no event will the Sponsor's total cost responsibility exceed the then-current cost ceiling. The Contractor will perform a close-out of the Agreement after all costs are accounted for and refund any unexpended funds to the Sponsor pursuant to LLNS's standard close-out procedures.

F. The indemnity, disclaimer of warranty, confidentiality, termination, miscellaneous, and intellectual property provisions of this Agreement will survive expiration or earlier termination of this Agreement.

XX. MISCELLANEOUS PROVISIONS

A. The Parties shall attempt to jointly resolve all disputes arising out of or otherwise relating to this Agreement. If the Parties are unable to jointly resolve a dispute within sixty (60) days, they agree to submit the dispute to a third-party mediation process that is mutually agreed upon by the Parties. If the Parties are still unable to resolve the dispute, then either Party may file action in any court of competent jurisdiction serving Alameda County, California. To the extent that there is no applicable U.S. Federal law under which to interpret this Agreement, the Agreement and performance hereunder and any other matter which arises under or is otherwise related to this Agreement, shall be governed by the laws of the State of California, without reference to that state's conflict of law provisions.

B. If, for any reason, a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of the Agreement will continue in full force and effect.

C. The relationship created by this Agreement is that of independent contractors. No Party shall hold itself out as being an employee, principal, partner, broker, servant or agent of the other Party.

D. Section headings of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof or to affect the meaning of this Agreement.

E. This Agreement may be signed in two (2) counterparts, each of which shall be deemed an original and which together shall constitute one Agreement.

F. All notices under this Agreement shall be sent in writing addressed to the individuals specified on the SOW. Notices sent via electronic mail shall be effective only if the Party which sent the notice can demonstrate that the e-mail notice was actually received by the intended recipient.

G. Failure of either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

END OF ATTACHMENT A

EUROPEAN UNION
European Structural and Investing Funds
Operational Programme Research,
Development and Education

SPP Agreement L-22545

ATTACHMENT B--INTELLECTUAL PROPERTY RIGHTS /RIGHTS IN TECHNICAL DATA - PROPRIETARY DATA PROTECTION

A. Definitions: The following definitions shall apply to this Section:

1. "Generated Information" means information which is first produced in the performance of this Agreement, including any subcontracts. The term includes Modifications, but does not include Improvements.

2. "Improvements" means any and all works which derive from LLNL Background Intellectual Property, which were first produced in the performance of this Agreement.

3. "Modifications" means any and all works which derive from Sponsor Background Intellectual Property, which were first produced in the performance of this Agreement.

4. "Proprietary Information" means information which is first developed solely at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of Information Act [5 USC 552 (b)(4)]. Notwithstanding the foregoing, the term "Proprietary Information" shall not include any information that is: (i) already lawfully in the possession of or known to the recipient as of the date such information is received, but without any obligation of the recipient to keep and maintain such information in confidence; (ii) already in the public domain at the time of disclosure, or which, after such disclosure, enters into the public domain through no fault of the recipient; (iii) lawfully furnished or disclosed to the recipient by a non-party to this Agreement without any obligation of confidentiality and through no wrongful act of the recipient; or (iv) independently developed by recipient without the use of the Proprietary Information.

5. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

B. For work performed at LLNL, the Sponsor agrees to furnish the Contractor or leave at LLNL that information, if any, which is: (1) essential to the performance of work by the Contractor, or (2) necessary for the health and safety of Contractor personnel in the performance of the work. Any information furnished to the Contractor shall be deemed to have been delivered with Unlimited Rights, unless it is marked/identified or designated as Proprietary Information as provided herein.

C. The Sponsor agrees that: (1) for tangible forms of information which it provides to the Contractor, the Sponsor shall mark all such documents/records which embody the information as "Proprietary Information," or use some similar legend; and (2) for intangible forms of information which it provides to the Contractor, the Sponsor shall identify at the time of initial disclosure that the Sponsor believes that such information qualifies as Proprietary Information, and then confirm, in writing, within thirty (30) days of initial disclosure that the information disclosed in intangible form was Proprietary Information. The Sponsor agrees that it has the sole responsibility for appropriately identifying and marking all documents containing Proprietary Information, whether such documents are furnished by the Sponsor or produced

under this Agreement and made available to the Sponsor for review. The Sponsor may designate as Proprietary Information any portion of the Generated Information as Proprietary Information; provided that the portion(s) so designated qualify as Proprietary Information hereunder.

D. In the case of any pre-existing restricted computer software provided to the Contractor by the Sponsor, the Sponsor agrees to specifically list such pre-existing restricted computer software as Sponsor BIP in Attachment C. Contractor agrees to treat such Sponsor provided pre-existing computer software in accordance with any restrictive legends contained therein.

E. Proprietary Information disclosed to the Contractor or generated hereunder shall be maintained in confidence by the Contractor by taking reasonable measures to protect the Proprietary Information from misuse and unauthorized disclosure. Upon completion of activities under this Agreement, such Proprietary Information will be disposed of as reasonably requested by the Sponsor, except that Proprietary Information contained in electronically archived or backed-up notes, reports, correspondence, emails, and other business records (collectively, "Backed-up Materials") need not be returned or destroyed, but shall be subject to all other terms of this Agreement.

F. The Contractor agrees not to disclose Proprietary Information to anyone other than the Sponsor without the written approval of the Sponsor, except the Contractor may disclose such Proprietary Information without violating its duty of confidence hereunder: (1) to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 USC 1905); (2) to its employees, agents, consultants, and subcontractors which have a "need to know" and are bound by a similar duty of confidence regarding such Proprietary Information; and (3) if required to do so under legal process (including in response to a Freedom of Information Act request), provided that the Sponsor has sufficient notice and is afforded a reasonable opportunity to seek a protective order or otherwise prevent disclosure. The Government and Contractor shall have the right, at reasonable times up to three (3) years after the termination or completion of this Agreement, to inspect any information designated as Proprietary Information by the Sponsor, for the purpose of verifying that such information has been properly identified as Proprietary Information.

G. The Sponsor agrees that the Contractor will provide the Government a nonproprietary description of the work performed under this Agreement.

H. The Government, Contractor and Sponsor shall each have Unlimited Rights in all Generated Information, except for information which is disclosed in a subject invention disclosure being considered for patent protection, or which is protected as Proprietary Information hereunder.

I. Improvements. As between the Parties, the Contractor shall own all rights, title and interests, in and to any Improvements and such Improvements shall not qualify as Generated Information hereunder. Contractor hereby grants to Sponsor a royalty-free license to use such Improvements for its internal, research purposes only, and not for any commercial purposes, during the term of this Agreement. Should the Sponsor upon the expiration or termination of this Agreement seek a license to such Improvements (along with relevant LLNL Background Intellectual Property), the Parties will negotiate, in good faith, the terms of such license, including any applicable license/royalty fees.

J. Modifications. Modifications shall qualify as Generated Information hereunder, and may be marked as Sponsor Proprietary Information, as appropriate.

K. Subcontracts. To the extent that a subcontractor is retained by LLNS to perform some of the technical requirements of this Agreement, the Sponsor acknowledges that FAR 52.227-14 will govern the relationship between LLNS and the subcontractor. The Sponsor hereby acknowledges and agrees that it has no expectation of electing title to any copyrightable works first authored by a LLNS subcontractor, and that its rights to technical data created by a subcontractor shall be as otherwise provided in FAR 52.227-14. To the extent that the Sponsor wishes to obtain additional or different rights than that allocated in FAR 52.227-14 in the subcontract, the Sponsor is encouraged to negotiate directly with the subcontractor for such additional or different rights.

ATTACHMENT C – BACKGROUND INTELLECTUAL PROPERTY

The term "Background Intellectual Property" (or "BIP") means the intellectual property identified below which existed prior to the Effective Date of this Agreement or is first produced outside the scope of this Agreement.

Each Party represents that it has used reasonable efforts to list all relevant Background Intellectual Property. Background Intellectual Property may exist that is not identified below. Neither Party shall be liable to the other Party because of failure to list Background Intellectual Property. The primary purpose of such listing is for each Party to place the other Party on notice of the existence of such Background Intellectual Property as may be relevant for this Agreement.

[redacted]

ATTACHMENT D – STATEMENT OF WORK