

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC

a Delaware Limited Liability Company

LIMITED LIABILITY COMPANY AGREEMENT

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LAWRENCE LIVERMORE NATIONAL SECURITY, LLC

LIMITED LIABILITY COMPANY AGREEMENT

This LIMITED LIABILITY COMPANY AGREEMENT (“Agreement”) is effective as of September 27, 2006, among The Regents of the University of California (the “University” or “UC”), Bechtel National, Inc. (“Bechtel”), BWX Technologies, Inc. (“BWXT”) and Washington Group International, Inc. (“WG”), each hereinafter referred to as a “Member” or collectively as the “Members.”

RECITALS

WHEREAS, the University has managed and operated the Lawrence Livermore National Laboratory (“LLNL”) under a contract with the National Nuclear Security Administration of the United States Department of Energy (“DOE/NNSA”) and its predecessor agencies since 1952;

WHEREAS, the DOE/NNSA has issued a Request for Proposals under Solicitation No. DE-RP52-06NA27344 (“RFP”) for the award, through a competitive process, of a new prime contract (the “Prime Contract”) for the management and operation of LLNL;

WHEREAS the Members have determined that they can respond to the RFP and operate in accordance with the terms of the Prime Contract consistent with their respective nonprofit and corporate purposes;

WHEREAS, UC and Bechtel executed a teaming agreement, effective May 9, 2006 for the purpose of preparing a proposal (“Proposal”) in response to the RFP;

WHEREAS, pursuant to the teaming agreement between UC and Bechtel, UC was responsible for bringing additional university participation to the UC-Bechtel team, and Bechtel was responsible to bring additional nonprofit or industrial concern participation to the team;

WHEREAS, Bechtel executed a teaming agreement with BWXT and WG effective May 15, 2006, outlining the participation of BWXT and WG on the team;

WHEREAS, the University entered into a teaming agreement with Texas A&M University, and Bechtel has entered into teaming agreements with Battelle Memorial Institute and four small business team members;

WHEREAS the Members intend to establish a limited liability company (the “Company”) pursuant to the Delaware Limited Liability Company Act and this Agreement for the purpose of accepting the award of the Prime Contract and acting as the contractor to DOE/NNSA under the Prime Contract;

WHEREAS, the Members, in their individual interests in sharing the rewards of the Prime Contract resulting from the RFP, have jointly prepared the Proposal on behalf of the Company for submission to DOE/NNSA in response to the RFP;

WHEREAS, the Members intend that the purpose of the Company will be to manage the Lawrence Livermore National Laboratory under the Prime Contract; and

WHEREAS, the Members desire to enter into a limited liability company agreement in compliance with the Delaware Limited Liability Company Act and in order to set forth the details of their relationship and the governance and management of the Company;

NOW, THEREFORE, in consideration of the promises and the mutual agreements and representations herein contained, and intending to be legally bound hereby, the Members agree as follows:

Article I Definitions

1.1 Definitions. The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

“Advisory Member Governors” has the meaning set forth in section 7.1(b)(iv) of this Agreement.

“Affiliate” shall mean any entity directly or indirectly controlling, controlled by, or under direct or indirect common control with, another entity.

“Agreement” shall mean this Agreement together with the Exhibits hereto as the same may be amended from time to time.

“Bankruptcy” means, with respect to a Member or the Company, the occurrence of any of the following: (a) the filing of a voluntary petition for relief under the U.S. Bankruptcy Code or an admission by such person of such person's inability to pay its debts as they become due, (b) the making by such person of a general assignment for the benefit of creditors, (c) in the case of the filing of an involuntary petition in bankruptcy against such person, the filing of an answer admitting the material allegations thereof or consenting to the entry of an order for relief, or a default in answering the petition, (d) the entry of an order for relief under the U.S. Bankruptcy Code against such person, or (e) the entry of an order, judgment or decree of any court adjudicating such person bankrupt or appointing a trustee or receiver for such person's assets.

“Board of Governors” or “Board” means the governing board established by this Agreement for the purpose of overseeing the management and operation of the Laboratory.

“Capital Account” means, with respect to any Member, the account maintained for such Member in accordance with Section 11.3 and Exhibit A attached hereto.

“Capital Contribution” means, with respect to any Member, the total amount of money and the initial Gross Asset Value of property other than money, if any, contributed to the Company by such Member.

“Capital Percentage” means, for each Member, a percentage equal to (i) the aggregate Capital Contribution of such Member divided by (ii) the aggregate Capital Contributions of all Members, as reflected on Exhibit D to this Agreement.

“Certificate of Formation” means the Certificate of Formation of LAWRENCE LIVERMORE NATIONAL SECURITY, LLC filed with the Secretary of State of Delaware, a copy of which is attached as Exhibit F.

“Company” means LAWRENCE LIVERMORE NATIONAL SECURITY, LLC, the limited liability company that is the subject of this Agreement.

“Consequential Damages” means any indirect, special or consequential loss or damages, however caused, and shall include but is not limited to, lost profits or revenues, loss of opportunity, loss of interest or other financing charges, or loss of use, whether foreseeable or unforeseeable, and whether claims for such loss or damage are brought in tort, contract, or otherwise.

"Debarment" shall have the meaning set forth in FAR Subpart 9.4. For the purposes of this Agreement, Debarment shall also mean Ineligibility under such subpart of a Member, but solely during the periods:

(A) prior to award of the Prime Contract, or

(B) at any time during performance where such Ineligibility would preclude DOE/NNSA from renewing or otherwise extending the Prime Contract under FAR 9.405-1; and where such Ineligibility is not lifted prior to the scheduled date of award or applicable contract action.

"Delaware Act" means the Delaware Limited Liability Company Act, Delaware Code, Chapter 18 of Subtitle Title 6, § 18-101, et seq., as amended from time to time.

"Depreciation" shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year for federal income tax purposes, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the Federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board of Governors.

"Distributable Cash" means, as of the end of any Fiscal Year or other applicable period, cash funds of the Company in excess of (i) working capital reasonably required for the satisfaction of the Company's expenses; (ii) amounts reasonably required for the satisfaction of the Company's liabilities and (iii) Reserves reasonably necessary to the proper operation of the Company's business, all as determined by the Executive Committee.

"Executive Committee" means the executive committee of the Board established by Article VII.

"Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

"GAAP" shall mean United States generally accepted accounting principles applicable to the Company.

"Governor" means an individual appointed to, and serving as, a member of the Board of Governors pursuant to Section 7.1.

"Gross Asset Value" shall mean, with respect to any asset, such asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the fair market value of such asset at the time it is accepted by the Company, unreduced by any liability secured by such asset, as determined by the Executive Committee of the Board of Governors pursuant to Section 8.1 of the Agreement;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective fair market values (taking into account § 7701(g) of the IRC), unreduced by any liabilities secured by such assets, as determined by the Executive Committee pursuant to Section 8.1 of the Agreement, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Company to a Member of more than a *de minimis* amount of Property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Treasury Regulation § 1.704-1(b)(2)(ii)(g); provided, however, that an adjustment pursuant to clause (a) or (b) of this sentence shall be made only if the

Executive Committee reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset, unreduced by any liability secured by such asset, on the date of distribution as determined by the Executive Committee pursuant to Section 8.1 of the Agreement. If the Gross Asset Value of an asset has been adjusted pursuant to Paragraph (ii) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Loss.

“Independent Governor” is defined in section 7.1(b)(ii) of this Agreement

“Ineligibility” shall mean suspension or notice of proposed debarment under FAR Subpart 9.4.

“Initial Capital Contribution” means a Member’s initial Capital Contribution to the Company pursuant to Section 11.1 of this Agreement.

“IRC” means the Internal Revenue Code of 1986, as amended from time to time.

“Key Personnel” means Laboratory Employees assigned to positions that are identified in the Prime Contract by title as Key Personnel.

“LLC Interest” means a Member’s right to participate in the management of the affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision of the Company or the Members, but does not include the Member’s Ownership Interest in the Company.

“Laboratory” or “LLNL” means the Lawrence Livermore National Laboratory at Livermore, California.

“Laboratory Employee” means an employee of a Member or an employee of the Company who is assigned to perform work under the Prime Contract.

“Member” shall mean each of the Members that execute this Agreement and any other entity subsequently admitted as a member of the Company in accordance with this Agreement and under the Delaware Act.

“Membership Interest” shall mean a Member’s entire interest in the Company, including the Member’s Ownership Interest and the Member’s LLC Interest.

“Net Income and Net Loss” shall mean, for each Fiscal Year or Other Period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or Other Period determined in accordance with § 703(a) of the IRC (but including in taxable income or loss, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to § 703(a)(1) of the IRC), with the following adjustments and clarifications:

(i) Any income of the Company exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in § 705(a)(2)(B) of the IRC (or treated as expenditures described in § 705(a)(2)(B) of the IRC pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted in accordance with Paragraph (ii) or Paragraph (iii) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(iv) Gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or Other Period;

(vi) Any amounts earned by Battelle or a small business teaming subcontractor pursuant to the provisions of Article V of this Agreement shall be taken into account as an expense of the Company in computing Net Income or Net Loss; and

(vii) Unshared Unallowable Costs and Proposal Preparation Costs shall not be considered in determining Net Income or Net Loss.

“Other Period” means the period for determining net income and net loss of the Company on an interim basis no less frequently than monthly.

“Ownership Interest” means a Member’s interest in (i) Net Income and Net Loss of the Company, (ii) items of income, gain, loss or deduction of the Company that are specially allocated, and (iii) distributions of Distributable Cash and Company Property. A Member's Ownership Interest does not include the Member’s LLC Interest, if any, in the Company.

“Planned Unallowable Costs” means costs that are deliberately incurred with the approval of the Executive Committee in connection with the management and operation of LLNL but which are not allowable under the Prime Contract. Planned Unallowable Costs shall not include Unshared Unallowable Costs.

“Pre-Battelle Income” or “Pre-Battelle Loss” for any Fiscal Year shall mean the Net Income or Net Loss of the Company for such Fiscal Year, determined without regard to the following:

(i) any amounts paid to or earned by Battelle pursuant to the provisions of Section 5.1 of this Agreement; and

(ii) any amounts included in Net Income or Net Loss arising as a result of an adjustment to the Gross Asset Value of any Company asset pursuant to clause (ii) or (iii) of the definition of Gross Asset Value, including, without limitation, any gain or loss described under clause (iii) of the definition of Net Income and Net Loss.

“Prime Contract” means the contract to be awarded by DOE/NNSA for the management and operation of the Lawrence Livermore National Laboratory under Request for Proposal number DE-RP52-06NA27344.

“Property” shall mean all real and personal property owned by the Company and shall include both tangible and intangible property.

“Proposal Preparation Costs” shall mean costs incurred in connection with supporting the proposal effort and activities leading to the signing of the Prime Contract, as described in any teaming agreement to which a Member is a party.

“Protected Party” means the Governors and Officers of the Company, and the employees, directors and officers of the Members.

“Reserves” shall mean, for any fiscal period, funds set aside or amounts allocated during such period to reserves that shall be maintained in amounts deemed sufficient by the Executive Committee for working capital and to pay Planned Unallowable Costs, taxes, insurance, fines and penalties, capital improvements and replacements, other Unplanned Unallowable Costs, including reserves for contingent liabilities, or other costs or expenses incident to the ownership or operation of the Company’s business.

“Retained Earnings Percentage” shall mean, for each Member, the percentage set forth opposite each Member’s name in Exhibit D to this Agreement.

“Securities Act” shall have the meaning set forth in Section 16.16.

“Tax Matters Partner” shall have the meaning set forth in Section 12.8.

“Transfer” means transfer, sell, assign, convey, pledge, encumber or in any way alienate or agree to do any of the foregoing.

“Treasury Regulation” shall include temporary and final regulations promulgated under the IRC in effect on the date of this Agreement and the corresponding sections of any regulations subsequently issued that amend or supersede those regulations.

“Unplanned Unallowable Costs” means costs disallowed by NNSA or otherwise determined to be unallowable under the Prime Contract after having been incurred by the Company or a Member as result of performing under the Prime Contract, such as and including fines, penalties and cost under the proceedings cost principle.

“Unreturned Additional Capital” shall mean, as of any given date, the excess, if any, of (A) the aggregate additional Capital Contributions made by the Members pursuant to Section 11.2(a), over (B) the aggregate distributions made to the Members pursuant to Section 12.2(a)(i).

“Unshared Unallowable Costs” shall have the meaning set forth in Exhibit H to this Agreement.

“WFO” is defined in Section 5.1(a).

Article II

Formation, Term and General Organization of the Company

2.1 Formation.

- (a) Nature of the Company. The Members agree to form the Company as a limited liability company pursuant to the Delaware Limited Liability Company Act and this Agreement.
- (b) Manner of Formation. The Company has been formed by executing and filing a Certificate of Formation as set forth in Exhibit F with the Delaware Secretary of State, in accordance with and pursuant to the Delaware Act and this Agreement.
- (c) The Founding Members. The Members hereto, as listed in Article IV, will be the founding Members of the Company and shall be deemed admitted as Members of the Company upon its formation.

2.2 Name. The name of the Company will be LAWRENCE LIVERMORE NATIONAL SECURITY, LLC.

2.3 Principal Executive Office. The Company may locate its principal executive office and other places of business at any place or places within the United States as the Executive Committee of the Board of Governors may from time to time deem advisable. The initial location of the principal executive office will be at 1658 Holmes St., Livermore, California 94550.

2.4 Registered Agent. The Company’s registered agent in Delaware will be Corporation Trust Company. The Company's registered office in the State of Delaware is located at Corporation Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The registered agent may be changed at any time by the Members.

- 2.5 Term of the Company. The term of the Company commenced upon the filing of the Certificate with the Delaware Secretary of State and shall continue: (a) for the duration of the Prime Contract plus an additional period, not to exceed fifty years, required to close out all contractual matters and potential liabilities of the Company; or (b) until such time as the Company receives notice from DOE/NNSA that the Prime Contract will not be awarded to the Company and all opportunities for appeal or protest of the decision have expired; or (c) until terminated in accordance with Section 15.1(a). The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate in the manner required by the Delaware Act.
- 2.6 Term of this Agreement. This Agreement is effective as of the effective date set forth in the preamble above. It is the intent of the Members that, upon formation of the Company, this Agreement will continue in effect in accordance with its terms and the Delaware Act for so long as the Company is in existence
- 2.7 Filings. The Members will promptly cause the execution and delivery of such documents and performance of such acts consistent with the terms of this Agreement as may be necessary to comply with the requirements of law for the formation, qualification and operation of a limited liability company under the laws of each jurisdiction in which the Company will conduct business.
- 2.8 Tax Treatment. The Members hereby acknowledge their intent and agreement that the Company shall be treated as a partnership for purposes of the IRC and related Treasury Regulations, but for all other purposes the rights and liabilities of the Members and the Company shall be as set forth in the Delaware Act and this Agreement. The Members agree to revise this Agreement as necessary to maintain such tax treatment.
- 2.9 Members' Interests in the Company. Each Member shall have a Membership Interest in the Company consisting of an LLC Interest and an Ownership Interest.
- 2.10 General Organization of the Company. The Members agree that the Company will be managed: (1) by the Members directly as to matters reserved to the Members by this Agreement, which are generally related to the corporate organization and purpose of the Company, the relationship between the Members, and the respective Interests of the Members in the Company; and (2) by the Members through representatives of the Members appointed to the Executive Committee of the Board of Governors described in Article VII; and (3) by individuals appointed to any other Company positions established pursuant to this Agreement.
- 2.11 Fiduciary Obligations of Member Representatives. Any individual appointed to the Executive Committee of the Board of Governors or other Company position may hold a concurrent position as an employee or officer of a Member, including an employee or officer also identified as representing the Member for the purposes of this Agreement; and in such event the Members agree that there shall be no liability on the part of any such individual for breach of any fiduciary obligation, to either the Company or to either Member, arising from acts or omissions committed in good faith in reliance on the terms of this Agreement and the conditions of his or her appointment.
- 2.12 Admission of New Members, Withdrawal of Initial Members. In view of the purpose of the Company being limited to the management and operation of the Lawrence Livermore National Laboratory for the duration of the Prime Contract, it is not contemplated that additional members will be admitted to the Company, or that any of the Members will withdraw from the Company or transfer their interests in the Company during the term of the Company.

Article III
Purpose, Objective and Powers of the Company

- 3.1 Purpose. The purpose of the Company shall be to manage and operate the Lawrence Livermore National Laboratory in a manner that furthers the interests of the national security and advances the DOE/NNSA missions, programs and objectives in accordance with the terms of the Prime Contract. The Company shall not engage in any business or activity other than as set forth in this Section 3.1 without the written agreement of the Members.
- 3.2 Performance Guarantee. Each Member shall provide a Performance Guarantee Agreement to DOE/NNSA as required by and in the form prescribed by DOE/NNSA.
- 3.3 Powers of the Company. Subject to the limitations of Articles VI, VII and VIII, the Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, convenient or incidental to or for the furtherance of the purpose and business set forth in Section 3.1, including but not limited to the power:
- (a) To conduct business, carry on its operations and have and exercise the powers granted to a limited liability company by the Delaware Act in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;
 - (b) To acquire by purchase, lease, contribution of property or otherwise, own, hold, operate, maintain, finance, improve, lease, sell, convey, mortgage, transfer, demolish or dispose of any real or personal property that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;
 - (c) To enter into, perform and carry out contracts of any kind, including, without limitation, contracts with any Member or any Affiliate thereof, or agent of the Company necessary to, in connection with, convenient to, or incidental to the accomplishment of the purpose and business of the Company;
 - (d) To sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;
 - (e) To appoint employees and agents of the Company, and define their duties and fix their compensation;
 - (f) To indemnify any person in accordance with this Agreement and the Delaware Act and to obtain any and all types of insurance;
 - (g) To negotiate, enter into, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge or take any other action with respect to any lease, contract or security agreement in respect of any assets of the Company;
 - (h) To pay, collect, compromise, litigate, arbitrate or otherwise adjust or settle any and all other claims or demands of or against the Company and to hold any proceeds against the payment of contingent liabilities;
 - (i) To cease its activities and cancel its Certificate; and
 - (j) To make, execute, acknowledge and file any and all documents or instruments necessary, convenient or incidental to the accomplishment of the purposes of the Company.
- 3.4 Means of Staffing the Company.

- 3.4.1 The Members shall appoint individuals to the positions allocated to the Members on the Board, as described further in Articles VI and VII. Independent Governors shall be appointed by and shall serve at the pleasure of the Executive Committee of the Board as described in Article VII. Up to two (2) Advisory Member Governors shall be appointed by The University and up to (2) shall be appointed by Bechtel. All Advisory Member Governors shall be approved by the Executive Committee and shall serve at the pleasure of the nominating Member.
- 3.4.2 The Members recognize the specific and unique expertise they each bring to the Company and acknowledge their intent to bring this expertise to bear in a balanced manner to maximize the management performance of the Prime Contract while preserving and improving the high quality of science and the healthy environment for conducting science at LLNL.
- 3.4.3 Each of the Members shall ensure the availability of highly qualified personnel to staff positions within the Company as employees of the Company. The Members shall have primary responsibility for staffing the following areas:
 - 3.4.3.1 The University's primary areas of expertise and focus will be programs and science and technology. As such, the University will provide the key lead personnel and the majority of staff for programs and S&T matrix organizations, to bring the standards of world-class science and peer review, the values of intellectual independence, and access to the resources of the University and the scientific community at large.
 - 3.4.3.2 Bechtel's primary areas of expertise and focus will be operations, business management and project management. As such, Bechtel will be expected to provide an appropriate number of key personnel with superior qualifications to lead the operational and business management organizations of LLNL. In addition, Bechtel will provide an appropriate number of lower-level personnel with the requisite qualifications to serve in these same LLNL organizations to bring the best management practices of the private sector for establishing and assuring performance in areas such as security, facilities, information technology, procurement, finance and human resources.
 - 3.4.3.3 The primary areas of expertise of WG and BWXT will be in operations related to management and operation of nuclear and high hazard facilities, the manufacturing associated therein, and safeguards and security. As such, WG and BWXT will provide an appropriate number of Key Personnel with superior qualifications to lead the foregoing areas. In addition, WG and BWXT will provide an appropriate number of other personnel with the requisite qualifications to support the foregoing areas. WG and BWXT shall also, to the extent mutually agreeable to WG or BWXT and the Company, provide other personnel to support operations and business management of the Company.
 - 3.4.3.4 The Members will supplement their own personnel resources and the existing LLNL workforce with expertise drawn from academic team members identified in the Company's Proposal and from other subcontractors to the Company as required.
- 3.4.4 Laboratory Employees will be hired in accordance with Clause H-35 (b) of the Prime Contract.

- 3.4.5 Where necessary for the efficient performance of the Contract, and consistent with DOE guidance for use of off-site resources, the Company may request a Member to provide loaned subject matter expert employees on a temporary basis, all in accordance with Section 6.3.

Article IV Members and Notices

- 4.1 Members. The names and addresses of the Members are as set forth below:

The Regents of the University of California
1111 Franklin Street
Oakland, CA 94607-5206
ATTN: Mr. Jeffrey A. Blair

Bechtel National, Inc
5275 Westview Drive
Frederick, MD 21703
ATTN: Ms. Sandra Ogden

BWX Technologies, Inc.
2016 Mt. Athos Road
Lynchburg, VA 24504-5447
ATTN: Mr. Charles F. Seabolt

Washington Group International, Inc.
P.O. Box 73, 720 Park Blvd.
Boise, Idaho 83729
ATTN: Mr. E. Preston Rahe, Jr.

- 4.2 Notices. All necessary notices, demands, requests, designations and revocations required or permitted to be given hereunder shall be in writing and addressed as set forth in Section 4.1 above. Notices shall be delivered by hand, by a recognized courier service, by facsimile transmission, or by electronic mail with delivery and read receipt, and shall be effective upon receipt, provided that notices shall be presumed to have been received:
- (a) If given by hand, on the date of delivery if delivered during normal business hours on a business day, and otherwise on the next business day;
 - (b) If given by courier service, on the second business day following delivery of the notice to a recognized courier service before the deadline for delivery on or before the second business day following delivery to such service, delivery costs prepaid, addressed as aforesaid; and
 - (c) If given by electronic image transmission, on the next business day; provided that the transmission is confirmed by answer back, written evidence of electronic confirmation of delivery, or verbal or written acknowledgment of receipt thereof by the addressee.

From time to time any party may designate a new address and/or electronic address for the purpose of notice hereunder by written notice to the other Members in accordance with the provisions of this Section 4.2.

Article V Teaming Subcontractors

5.1 Battelle Memorial Institute.

The Company is authorized to engage Battelle Memorial Institute (“Battelle”) as an integrated management subcontractor and not as a Member of the Company. A definitive subcontract setting forth Battelle’s integrated subcontract relationship with the Company shall be approved by the Executive Committee pursuant to Section 8.1(a)(7) and shall provide substantially as follows:

- (a) Battelle shall assign to the Laboratory appropriate managerial personnel, acceptable to the Laboratory Director, who will have lead responsibility for developing Work for Others (“WFO”) programs and who will be integrated into the line management organization of the Laboratory under the authority of the Laboratory Director.
- (b) Battelle shall be entitled to nominate one non-voting advisory member to the Board of Governors pursuant to Section 7.1(b).
- (c) Battelle shall be reimbursed for its allowable costs incurred in connection with the assignment of personnel to the Laboratory. Subject to any required approvals or consents of DOE/NNSA, the definitive subcontract shall otherwise be no more nor no less favorable to Battelle than are the terms and conditions of the Prime Contract with regard to the Company.
- (d) In addition to the reimbursement of costs set forth in (c) above, Battelle shall receive a fee based on a share of the profits of the Company and shall be responsible for a share of any losses of the Company, as follows:
 - (1) For each Fiscal Year, Battelle shall earn a fee equal to 5% of any Pre-Battelle Income and shall be liable for 5% of any Pre-Battelle Loss for the Fiscal Year.
 - (2) For each Fiscal Year, Battelle also shall earn an Adjusted WFO Growth Incentive (as defined below) based on any increase during the Fiscal Year in Reimbursable Work above the Reimbursable Work Base defined below. The Adjusted WFO Growth Incentive shall equal a WFO Growth Incentive multiplied by a Battelle Realization Ratio. The WFO Growth Incentive shall be equal to the sum of:
 - (i) 60% of any Growth in Reimbursable Work Fee attributable to increases in Reimbursable Work of less than \$100 million in excess of the Reimbursable Work Base;
 - (ii) 40% of any Growth in Reimbursable Work Fee attributable to increases in Reimbursable Work of between \$100 million and \$200 million in excess of the Reimbursable Work Base; and
 - (iii) 20% of any Growth in Reimbursable Work Fee attributable to increases in Reimbursable Work of more than \$200 million in excess of the Reimbursable Work Base.

- (3) The following definitions apply to the foregoing determinations:
- (i) “Reimbursable Work” and “Work for Others” are interchangeable, and mean funding received under the Prime Contract from federal agencies other than DOE;
 - (ii) “Reimbursable Work Base” means the amount \$426,745,329 identified in the RFP as being the estimated level of WFO for the period 01Oct07 to 30Sep08, as adjusted for inflation using the U.S. Department of Labor, Bureau of Labor Statistics’ Employment Cost Index Private Wages and Salaries at the beginning of every second year of the contract;
 - (iii) “Reimbursable Work Fee” means the fixed fee for Reimbursable Work as described in Section B-2(e) of the RFP;
 - (iv) “Growth in Reimbursable Work Fee” is an increase in Reimbursable Work Fee above that listed in Section B-2(e)(2) of the RFP, for contract period 01Oct07 - 30Sep08 (\$7,254,671), as adjusted for inflation in the manner prescribed in (ii) above;
 - (v) “Battelle Realization Ratio” means the ratio determined by dividing (i) the amount of any Pre-Battelle Income for a Fiscal Year by (ii) the total fee available to the Company for the Fiscal Year, including fixed fee, maximum available performance incentive fee, and the Reimbursable Work Fee.
- (4) If Pre-Battelle Income is zero or less for any Fiscal Year, then the Adjusted WFO Growth Incentive for such Fiscal Year shall be zero.
- (e) The Company shall be entitled to reduce amounts accruing during a Fiscal Year under Sections 5.1(d)(1) and (d)(2) above by Battelle’s share of any Reserves that have not been included as expenses in determining Pre-Battelle Income. Any such Reserves shall not affect the amounts accruing to Battelle under Sections 5.1(d)(1) and (d)(2). In the event that the Company has made payments to Battelle in excess of the amounts to which it is entitled under Sections 5.1(d)(1) and (d)(2), Battelle shall repay the amount of such excess to the Company. With respect to any Fiscal Year that does not include twelve full months, all determinations necessary under Sections 5.1(d)(1) and (d)(2) above shall be made on a proportionate basis for such short period.
- (f) In the event that Planned or Unplanned Unallowable Costs are incurred and paid by the Company or by any Member after completion of the Prime Contract, the Company will be entitled to invoice Battelle for its share of such amount.
- (g) In the event that Planned or Unplanned Unallowable Costs are incurred on behalf of the Company and paid by Battelle after completion of Battelle’s subcontract, Battelle shall be entitled to invoice the Company for 95% of such amount.
- (h) As a subcontractor, Battelle shall have no Capital Account with the Company and shall not be required to make Capital Contributions to the Company.
- (i) The Members agree that the teaming agreement between Bechtel and Battelle, effective September 18, 2006, shall be assumed as an obligation of the Company consistent with this Article V. If DOE/NNSA awards the Prime Contract to the Company, the Company intends to enter into negotiations with Battelle to award one or more subcontracts to Battelle, subject to the consent of DOE/NNSA. Upon the award of such subcontract(s), the teaming agreement entered into between

Bechtel and Battelle and assumed by the Company shall terminate and the subcontract(s) will constitute the entire agreement between Battelle and the Company.

5.2 Small Business Teaming Subcontractors.

The Members have identified GEM Technologies, Inc., Dynamac Corporation, Professional Project Services, Inc., and TerranearPMC LLC as small business teaming subcontractors. Subject to NNSA approval and in accordance with NNSA subcontracting procedures, the Company is authorized to award these companies appropriate subcontracts consistent with the teaming agreements entered into between these companies and Bechtel. All profit or fee paid to these subcontractors shall be treated as a Planned Unallowable Cost and as an expense of the Company. The total annual fee or profit to be paid to the small business teaming subcontractors shall not exceed \$1.1 million unless approved by the Executive Committee pursuant to Section 8.1(a).

5.3 Academic Teaming Subcontractors.

The Company is authorized to engage Texas A&M University (Texas A&M) as an academic teaming subcontractor. Subject to NNSA approval and in accordance with NNSA subcontracting procedures, Texas A&M University shall be awarded an appropriate no-fee cost reimbursement subcontract consistent with the teaming agreement entered into between the University and Texas A&M, which is hereby assumed by the Company.

Article VI Management of the Company

6.1 Management by Members.

- (a) Except for matters reserved exclusively to the Members acting as such pursuant to Section 6.2 or other provisions of this Agreement, the management and the exercise of the powers of the Company shall be through the Executive Committee of the Board of Governors as described in Articles VII and VIII. Decisions and actions of the Executive Committee in accordance with this Agreement shall constitute decisions or actions of the Company and shall be binding on each Member in its capacity as a Member.
- (b) Except for matters reserved exclusively to the Members acting as such pursuant to Section 6.2 or other provisions of this Agreement, and except where a Member has been authorized by the Board of Governors to represent the Company with regard to a particular matter, the Members shall act through the Executive Committee of the Board of Governors and not individually, and no Member acting individually shall be an agent of the Company or shall have authority to bind the Company or incur a debt or liability on behalf of the Company. Any Member who binds or obligates the Company for any debt or liability or causes the Company to act, except in accordance with this Agreement, shall be liable to the Company and to the other Members for any such debt, liability or act.
- (c) To the extent that this Agreement requires any action to be taken by all Members acting as such and not through the Executive Committee of the Board of Governors, such action shall be documented in a writing describing the action taken and signed by the Members.

6.2 Matters Reserved to the Members.

- (a) Without limiting the generality of Section 6.1, the unanimous affirmative vote or written consent of all Members shall be necessary and sufficient for the Company to
- 1) Amend this Agreement, including its Appendices, or the Certificate of Formation;
 - 2) Change the purpose of the Company;
 - 3) Admit or substitute any third party as a Member of the Company or approve the withdrawal of an existing Member;
 - 4) Accept modifications to the Prime Contract that would constitute a cardinal change;
 - 5) Voluntarily dissolve, liquidate, reorganize, bankrupt or merge the Company with any other entity;
 - 6) Change the Company's Tax Matters Partner;
 - 7) Permit any Member to guarantee indebtedness or other obligation of the Company;
 - 8) Form any subsidiary or acquire any shares of stock or other ownership interests directly or indirectly in any corporation or entity;
 - 9) Form a joint venture or partnership or enter into a binding agreement to form such a relationship; or
 - 10) Add additional entities, other than those in Article V, that would be deemed to be part of the "teaming relationship" subject to Clause H-2(i) of the RFP.
- (b) Without limiting the generality of Section 6.1, the unanimous affirmative vote or written consent of UC and Bechtel shall be necessary and sufficient for the Company to
- 1) Require or permit capital contributions pursuant to Sections 11.1 and 11.2; or
 - 2) Require or accept loans to the Company by UC or Bechtel to the extent reasonably necessary to avoid default under the Prime Contract or to enable the Company to pay for Planned or Unplanned Unallowable Costs, on commercially reasonable terms.

6.3 Furnishing of Member Oversight, Support, Systems and Services to the Company.

In addition to the Initial Capital Contributions set forth in Exhibit D to this Agreement, but without modifying a Member's Capital Percentage in the Company, the Members shall provide oversight, support, systems and services to the Company for the performance of the Prime Contract and other activities of the Company as follows:

- (a) The Members shall provide oversight pursuant to Clauses H-6 and H-8 of the Prime Contract.
- (b) The Members shall provide systems and personnel consistent with the provisions of Clause H-8 of the Prime Contract.
- (c) The Members shall provide personnel on a temporary basis as requested by the Company and approved by DOE/NNSA, all as further provided in the clause of the Prime Contract entitled Contractor Purchasing System (DEAR 970.5244-1, DEC 2000).

To the maximum extent practicable, the Company shall ensure that the protections of the Prime Contract are available to the Members with respect to the foregoing. Except as

otherwise provided herein or the Prime Contract, any such services shall be provided on a cost reimbursable basis as determined by the Prime Contract without fee and without adjustment to the Member's Ownership Interests or reduction in the Net Income of the other Members.

Article VII The Board of Governors

7.1 The Board of Governors.

- (a) The Purpose, Authority and Actions of the Board and its Executive Committee.
- (1) Except for the matters reserved to the Members acting as such, and except for Parent Organization oversight and support that may be furnished through the services of expert personnel of the Members in accordance with the Prime Contract, the Members shall act exclusively through individuals appointed as Governors to the Executive Committee of a Board of Governors. The primary purpose of the Board of Governors shall be to oversee the affairs of the Company, including the management and operation of the Lawrence Livermore National Laboratory under the Prime Contract.
 - (2) The Executive Committee of the Board of Governors shall have the right, power and authority to exercise all of the rights, powers and authorities of the Company consistent with such purpose, this Agreement, the Prime Contract, and the Delaware Act. The Executive Committee shall take action as prescribed in Article VIII, taking into consideration the advice and counsel of the Independent Governors as described further below.
- (b) Governors. The Board of Governors shall have up to sixteen (16) positions, and shall comprise – an Executive Committee, advisory Independent Governors, a Battelle Governor, and up to four (4) Advisory Member Governors.
- (i) *Executive Committee.* The Executive Committee shall consist of six (6) positions, with three (3) being filled by individuals appointed by the University; and three (3) being filled by individuals appointed by Bechtel. One of Bechtel's appointed Governors shall be selected as described in Exhibit C. Governors on the Executive Committee shall be appointed for such terms and under such conditions as may be prescribed by their appointing Members, and shall serve until the expiration of their term or their resignation or removal by their appointing Member. The initial Governors constituting the Executive Committee are identified in Exhibit E.
 - (ii) *Independent Governors.* Five (5) positions on the Board not constituting the Executive Committee shall be filled by individuals who shall be appointed by the Executive Committee as non-voting advisory Independent Governors. Such Independent Governors shall be appointed for such terms and under such conditions as may be prescribed by the Executive Committee and shall not be employees or officers of the Members or their Affiliates.

- (1) The advisory Independent Governors shall be selected on the basis of the following criteria: (a) two (2) for expertise in the major mission area of national defense; (b) two (2) for expertise in the areas of management and operations; and (c) one (1) for his or her expertise in science and technology.
 - (2) The advisory Independent Governors shall be charged with assisting the Company in maximizing performance with respect to the objectives of the Prime Contract, while giving due consideration to protecting the health and safety of the Company's employees, the environment and the public, contributing to the national defense, and satisfying the interests of DOE/NNSA.
 - (3) The advisory Independent Governors shall be compensated a reasonable amount for their time and expenses and shall be appointed for such terms and under such conditions as are determined by the Executive Committee.
- (iii) *Battelle Governor.* One (1) position shall be filled by an individual nominated by Battelle and approved by the Executive Committee as a non-voting advisory Battelle Governor.
- (iv) *Advisory Member Governors.* The University and Bechtel may each nominate up to two (2) individuals as non-voting Advisory Member Governors for approval by the Executive Committee.
- (1) Advisory Member Governors shall be selected for the purpose of assisting the LLC Governors to maximize performance with respect to the objectives of the Prime Contract and the performance of the oversight goals, objectives and responsibilities of the Executive Committee. These Governors will serve on selected committees of the Board and will be selected as either chairs, vice chairs, or members of such committees under the procedures for selection of committee members set forth in the LLC Agreement.
 - (2) Advisory Member Governors shall be appointed for such terms as are recommended by the nominating Member and approved by the Executive Committee and may be removed at any time with or without cause by the nominating Member, without the approval of the Executive Committee.
 - (3) Advisory Member Governors shall not be compensated by the Company, and any compensation for such Governor's service, other than reimbursement for reasonable travel and related expenses, shall be borne by the nominating Member, unless otherwise approved in writing by the Executive Committee.
- (c) Chair and Vice Chair.
- (i) One of the three Governors appointed by the University shall be appointed by the University as the Chair of the Board and the Executive Committee. The Chair shall preside at all meetings of the Executive Committee and the full Board. The Chair shall have tie-breaking authority over any decision of the Executive Committee, except for those decisions requiring unanimity as set forth in Section 8.1(a).

- (ii) Bechtel shall be entitled to appoint the Vice Chair of the Board and the Executive Committee from among its appointees to the Board.
 - (iii) The Chair and the Vice Chair shall act as the designated representatives of the University and Bechtel on the Executive Committee, respectively, for purposes of the appointment and removal of Key Personnel in accordance with Section 8.2.
 - (d) Reserved.
 - (e) Vacancies. In the event of a vacancy on the Executive Committee, the Member or Members having cognizance over the position shall appoint a Governor in writing as provided in Section 4.2. A Member that appoints a Governor may remove such Governor, with or without cause, by notice to that effect given to the other Members and Governors in accordance with Section 4.2.
 - (f) Effect of Member Cessation. If at any time a Member ceases to be a Member of the Company for any reason: (i) that Member's Governors on the Board shall, without further action on the part of the Members or the Board, automatically and immediately cease being Governors; (ii) if the departing Member's Membership Interest is acquired by an entity who becomes a Member in accordance with this Agreement, such new Member shall be entitled to appoint Governors to the Board in accordance with this Article unless otherwise agreed to by all the Members approving admission of the new Member, and, if there is no such new Member, the Board shall be deemed to be reconstituted and consist of the individuals who are then Governors; and (iii) effective upon the departure of the Member, this Agreement shall be deemed amended to the extent necessary to conform to the provisions of this Section 7.1(f).
- 7.2 Call of Meetings. Meetings of the Board and the Executive Committee for any purpose shall be called by the Chair or his or her designee at a date and at a time and place established by the Chair. The Board and the Executive Committee shall have at least quarterly meetings and such other meetings as may be called by the Chair or his or her designee.
- 7.3 Location of Meetings. The Chair may designate any place, either within or outside the State of Delaware, as the location for any meeting of the Executive Committee or the Board. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal executive office of the Company.
- 7.4 Notice of Meetings. Notice of the place, day and hour of each meeting of the Board or Executive Committee, and the purpose or purposes for which the meeting is called, shall be given to each Governor entitled to participate, no fewer than ten business days before the date of the meeting, by or at the direction of the Chair or designee calling the meeting. Such notice shall identify actions to be voted upon at the meeting and shall be given in any manner so that Governors have reasonable opportunity to participate in the meeting. The requirement of notice, or any deficiency therein, shall be deemed to have been waived by any Governor who shall participate in such meeting, except with respect to the notice of actions requiring a unanimous vote pursuant to Section 8.1(a).
- 7.5 Electronic Meetings Permitted. The Governors may participate in a meeting of the Board by means of conference call, televideo, or internet-based conferencing equipment, and such participation shall constitute presence in person at such meeting.
- 7.6 Waiver of Notice. Whenever any notice is required to be given to any Governor, a waiver of the notice in writing signed by the Governor entitled to the notice, whether

before, at, or after the time stated therein, shall be the equivalent of the giving of the notice.

7.7 Board Committees.

- (a) Executive Committee. As described further in Article VIII below, the Executive Committee shall be responsible for decisions of the Company not reserved to the Members acting as such. Among other things, the Company's Contract Assurance Officer shall have a reporting relationship to the Executive Committee.
- (b) Standing Committees. The Executive Committee will integrate the expertise of the Members and the Independent Governors into oversight of the management and operation of the Laboratory through the following seven standing committees, which will report to the full Board:
 - (i) The Mission Committee will be responsible for addressing current and future issues related to the nation's national defense and their relation to current Laboratory initiatives, capabilities and strategic plans. This Committee will be chaired by an Independent Governor with expertise in national defense issues and appointed by the Executive Committee.
 - (ii) The Science and Technology Committee will be responsible for addressing the state of the Laboratory's scientific expertise and the ability to attract and retain scientific staff in core and critical technical areas. This Committee will be chaired by a Governor appointed by the Chair.
 - (iii) The Nominations and Compensation Committee will be responsible for addressing the selection, performance, compensation and other aspects of the Laboratory Director and other Key Personnel. This Committee will be chaired by a Governor appointed by the Chair.
 - (iv) The Ethics and Audit Committee will be responsible for addressing the integrity of the Laboratory financial system and other aspects of Laboratory operations, including for example internal controls, whistleblower issues, procurement integrity, and human resources issues. This Committee will be chaired by a Governor appointed by the Vice Chair.
 - (v) The Laboratory and Business Operations Committee will be responsible for addressing the quality and efficacy of the business and operations of the Laboratory and will seek to install best practices throughout the Laboratory. This Committee will be chaired by a Governor appointed by the Vice Chair.
 - (vi) The Weapons Complex Integration Committee will be responsible for addressing matters related to the integration of the NNSA weapons complex with the goal of achieving an agile, flexible and efficient complex. This Committee will be chaired by an Independent Governor with expertise in national defense matters and appointed by the Executive Committee.
 - (vii) The Safeguards and Security Committee will be responsible for addressing the adequacy of security and safeguards at the Laboratory. This Committee will be chaired by the Vice Chair or other Governor appointed by the Vice Chair.
- (c) Ad hoc Committees and Subcommittees. The Executive Committee may establish *ad hoc* advisory committees or subcommittees from time to time to address temporary issues or issues requiring specialized expertise.

- 7.8 Principal Office Staff. The principal office identified in Section 2.3 may include a staff function appointed by the Executive Committee for the purpose of supporting the Executive Committee and the full Board. The principal office will have a site office function, lead by an individual appointed by Bechtel: (a) to collect regional information; (b) to develop and maintain corporate relationships with regional stakeholders; and (c) to provide such other support as may be required.
- 7.9 Emergency Procedures. Without reducing any rights of the Members or their appointed Governors under this Agreement, the Executive Committee may adopt such additional procedures as may be required to meet emergencies that cannot be reasonably and prudently addressed through the procedures in this Agreement.

Article VIII

Actions of the Board Through Executive Committee and its Chairs

- 8.1 Authorities and Voting Requirements of Executive Committee. Except for matters reserved to the Members acting as such, decisions of the Company shall be made by the Executive Committee. The Executive Committee shall act in accordance with the following voting requirements:
- (a) The following decisions require a unanimous vote of those Governors on the Executive Committee who participate in a meeting as described in Sections 7.5 and 8.3 and who do not abstain from voting:
 - 1) Making gifts or contributions to third parties;
 - 2) Payment of any bonuses, annual performance incentive awards, or other forms of compensation to Laboratory Employees or officers or Governors of the Company that are unreimbursed to the Company under the Prime Contract;
 - 3) Payments in the form of political contributions or lobbying expenses;
 - 4) Subject to the limitation contained in Section 12.3, distribution of any Distributable Cash or other Property to any Member;
 - 5) The initiation, or settlement of litigation against, or on behalf of, the Company, including but not limited to litigation with the Department of Energy/National Nuclear Security Administration or any appeal or protest of an award of the Prime Contract to another offeror or a request for a final decision pursuant to FAR 52.233-1, except for reimbursable litigation pursuant to the litigation management plan required by the Prime Contract;
 - 6) The approval of the parent organization oversight plan required by Clause H-6 of the Prime Contract, consistent with Section 3.4 of this Agreement; and
 - 7) Any decision to incur a Planned Unallowable Cost, including any action listed in Section 8.1 (b) to the extent that such action includes a decision to incur a Planned Unallowable Cost; and
 - 8) Approving the Pension Plan Two and other benefit plans for new employees under the Prime Contract Clause H-35(e)(3)(ii) and (d)(1)(ii), respectively.

- (b) All other decisions of the Company not reserved to the Members or listed in 8.1(a) above shall be made by the Executive Committee acting by majority vote in accordance with Section 8.3, subject to the tie-breaking authority of the Chair, including but not limited to the following:
- 1) Purchase of, or entering into a capital lease for, any real property;
 - 2) Designating independent Company accountants or auditors for the purposes of conducting audits required by Section 12.6(c);
 - 3) Appointing legal counsel to represent the Company with respect to governance or other matters not subject to the Company's Litigation Management Plan to be developed pursuant to 10 CFR Part 719;
 - 4) Other than as provided herein, any agreement to indemnify any third party;
 - 5) Approving the Pension Plan One and other benefit plans for transferring employees under the Prime Contract Clause H-35(e)(3)(i) and (d)(1)(i), respectively
 - 6) Establishing the Company's risk management and insurance program;
 - 7) All matters to be disclosed by the Company to the United States government other than in the course of ordinary Laboratory operations;
 - 8) Approving changes to the Company's Cost Accounting Standards (CAS) Disclosure Statement;
 - 9) The entering into of any agreement between the Company and a Member or Member Affiliate where such Member or Member Affiliate will earn profit or fee under the agreement; and
 - 10) Approving the contract assurance system required by Clause H-4 of the Prime Contract, the issuance of the annual assurance letter to DOE/NNSA, and the Company's Code of Business Ethics and Compliance Program.

8.2 Chair and Vice Chair Approvals

- (a) Appointment of Key Laboratory Personnel and Other Designated Personnel. The consent of the University and Bechtel, through the Chair and Vice Chair as their designated representatives on the Board, shall be required to approve the appointment of any LLNL Key Personnel, with due consideration of the views of the Laboratory Director and the other Governors of the Executive Committee.
- (i) The University shall nominate the individuals designated as Key Personnel performing as Laboratory Director and such other positions as are within the University's primary areas of expertise and focus described in Section 3.4.3.1. In addition, the University shall nominate individuals to the position of Laboratory Counsel and to the lead management positions responsible for governmental and public relations.
 - (ii) Bechtel shall nominate the individuals designated as Key Personnel performing as Deputy Director and such other positions as are within Bechtel's primary areas of expertise and focus described in Section 3.4.3.2.
 - (iii) WG and BWXT shall nominate the individuals designated as Key Personnel in those positions that are within WG's and BWXT's primary areas of expertise and focus described in Section 3.4.3.3.
- (b) Removal of Key Laboratory Personnel or Other Designated Personnel. The Chair or the Vice Chair may require the removal of any person designated as Key

Personnel or designated personnel nominated pursuant to paragraph (a) above, with due consideration of the views of the other Governors of the Executive Committee or otherwise appointed pursuant to paragraph (a) above; provided that (1) there is a written justification for the removal, which justification shall be based on the management performance, not the scientific views, of such person; and (2) if the Chair or Vice Chair, as the case may be, objects, a reasonable period of time will be given to effect a cure by demonstrating improved performance of such person to the satisfaction of the Chair or the Vice Chair, as the case may be.

- 8.3 Voting. (a) Subject to the tie-breaking authority of the Chair, each Governor on the Executive Committee shall have one vote on each matter coming before the Committee. Such matters shall be limited to those included in the notice described in Section 7.4 unless there is unanimous consent of all of the Governors of the Executive Committee to take action on a matter not included in the notice. Any Governor not present at a meeting may vote on any matter by general or specific proxy or by power of attorney to a representative present or by specific instructions to the Committee in writing. A quorum for the transaction of business at a meeting of the Committee for items listed in the notice described in Section 7.4 shall exist if a majority of the Executive Committee then in office are present in person or represented by proxy, power of attorney or other written instructions and if at least one Governor appointed by UC and one Governor appointed by Bechtel is so present or represented. Except as otherwise provided herein, and specifically as provided in Section 8.1 or elsewhere herein, actions of the Committee shall be by simple majority vote of all the Governors present or represented at a meeting at which a quorum is present. Notwithstanding the foregoing, a quorum for the meeting shall be deemed to exist at any meeting so long as proper notice of the meeting is provided in accordance with Section 7.4 with respect to formal actions identified in the notice requiring a vote pursuant to Section 8.1(a).
- (b) Substitution of Governors on Executive Committee. If a Governor on the Executive Committee is unavailable for any particular meeting of the Executive Committee, the Member that appointed such Governor may appoint a substitute Governor for such meeting by notice to that effect given to the other Members in accordance with Section 4.2.
- (c) Proxy Voting. Any Governor may appoint a proxy to vote on any matter at a meeting of the Executive Committee. An appointment of a proxy is effective when received by the Secretary of the Company (or other vote tabulator).
- 8.4 Action by Executive Committee Without a Meeting. An action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by all Governors, and included in the minutes or the Company records. Action taken under this Section 7.7 is effective when all Governors have signed the consent, unless the consent specifies a different effective date.
- 8.5 Resolution of Impasses.
- (a) If any matter required by Section 8.1 to be approved by a unanimous vote of the Executive Committee reaches an impasse due to failure to obtain the necessary vote, any Member, through the chief executive officer of its ultimate parent company, shall be provided a reasonable opportunity to present the matter in impasse to the Chair and Vice Chair for their review and resolution in such manner as they deem necessary or appropriate. The Chair and Vice Chair may

direct the Executive Committee to proceed in accordance with any decision reached by such individuals even if the Governor who created the impasse disagrees with the resolution if in the reasonable, good faith judgment of the Chair and the Vice Chair such action is necessary to protect the Company's interests prior to the completion of the disputes resolution process. In the event the Chair and Vice Chair fail to agree or if the Governor who created the impasse disagrees with the resolution, then such Governor may refer the matter to dispute resolution in accordance with Section 16.12.

- (b) If any matter requiring the concurrence of the Chair and Vice Chair under Section 8.2 above reaches an impasse, UC and Bechtel may submit the matter to the Chief Executive Officer of Bechtel Corporation and the Chair of the Board of Regents of the University of California for their review and resolution in such manner as they deem necessary or appropriate. In the event the impasse is not resolved within 30 days, either the University or Bechtel may treat the matter as a dispute to be resolved in accordance with Section 16.12.

Article IX Company Officials and Employees

- 9.1 Company Employees. The Executive Committee may appoint individuals to act in executive and/or administrative capacities to manage the affairs of the Company that it deems necessary for the efficient performance of the Contract.
- 9.2 Duties of the President and Laboratory Director. The President of the Company shall serve as its chief executive officer and shall also act as the Laboratory Director. The President and Laboratory Director shall direct the day-to-day operations at the Laboratory and shall be responsible for executing DOE/NNSA programs while ensuring contract compliance in Laboratory operations. To fulfill these responsibilities the President and Laboratory Director shall have such powers as are delegated by the Executive Committee and not reserved to the Members or the Executive Committee. The President and Laboratory Director shall report directly to the Executive Committee. Subject to the limitations of this Agreement, any policies or procedures established by the Executive Committee, and any written delegations from the Executive Committee, the President and Laboratory Director may sign and execute in the name of the Company deeds, mortgages, bonds, contracts, and other instruments.
- 9.3 Duties of the Vice President(s). The Executive Committee may appoint one or more Vice President(s). Such Vice Presidents shall have such powers and duties as may from time to time be assigned by the Executive Committee.
- 9.4 Duties of the Secretary. The Executive Committee may appoint a Secretary and one or more Assistant Secretaries. The Secretary(s) shall act as secretary of all meetings of the Executive Committee, the Board of Governors, and the Members of the Company. The Secretary shall have such responsibilities as may be assigned by the Executive Committee; including for example the maintenance of meeting minutes; the issuance of notices that are required to be issued by the Company; the maintenance of leases, contracts, and other Company documents; the maintenance of the books, records, and papers of the Company relating to its organization and management as a limited liability company; the issuance of reports, statements, and other documents required by law

- (except tax returns); and such other duties as from time to time may be assigned by the Executive Committee.
- 9.5 Duties of the Chief Financial Officer: The Executive Committee may appoint a Chief Financial Officer. The Chief Financial Officer shall be primarily responsible for financial planning, record-keeping and reporting. The Chief Financial Officer shall report to the President, and shall be responsible for communicating financial performance and forecasts to the Board of Governors and the Members.
- 9.6 Duties of the Treasurer/ Controller: The Executive Committee may appoint a Treasurer and Controller who shall have charge and custody of the funds, securities and other property and assets of the Company. He or she shall have responsibility for the accounting and financial books and records of the Company and shall have such other authority as may be granted by the Executive Committee to issue, negotiate or endorse checks, drafts, notes and bills, collect funds of the Company and deposit the same in the Company's bank accounts, and to withdraw and disburse the same on behalf of the Company.
- 9.7 Contract Assurance Officer: The Executive Committee shall appoint a Contractor Assurance Officer who shall report to both the President and Laboratory Director and the Executive Committee.. The Contractor Assurance Officer shall have primary responsibility for the development and maintenance of the contractor assurance system required by the Prime Contract and for such other duties as from time to time may be assigned by the Executive Committee.

Article X

Duties, Limitation of Liability, and Indemnification of Members and their Representatives

- 10.1 Duties of Members. The Members, their appointed Governors on the Board, and any other representatives of the Members shall perform their duties in good faith. Each Member's liability to third parties shall be limited as set forth in this Agreement, the Delaware Act, the Prime Contract, and other applicable law. No Member and no individual appointed to the Board of Governors shall be liable for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company or an employee or officer of a Member. Except as otherwise provided in this Agreement or as separately agreed to by a Member in writing, a Member shall not be liable to any person that is not a Member for any debts or losses of the Company.
- 10.2 Limitation of Liability of Members, Governors, and Officials. No Member or any Member representative who performs the duties of a Member or who acts as a Governor or other official of the Company in accordance with Section 10.1 shall have any liability to a Member or the Company solely by reason of being or having been a Member or Governor or other representative of the Company. No Member or Governor or other representative of a Member shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, or other willful misconduct. No amendment, repeal or modification hereof shall affect this Section 10.2 with respect to any act or omission occurring before the effective date of such amendment, repeal or modification.
- 10.3 Protection of Individuals.

- (a) A Protected Party may rely in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any person as to matters the Protected Party reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, income or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.
- (b) To the extent that, at law or in equity, a Protected Party has duties (including fiduciary duties) and liability relating thereto to the Company, a Member, or to any other Protected Party, a Protected Party acting under this Agreement shall not be liable to the Company, a Member, to any other Protected Party or to any third party for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Protected Party otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Protected Party to the fullest extent allowable by applicable law.

10.4 Indemnification and Insurance.

- (a) Right to Indemnification. The right to indemnification from the Company will exist for any Member or Protected Party who is threatened to be made a party to or is involved in any threatened, pending or completed action, suit, proceeding or alternative dispute resolution procedure, whether (i) civil or criminal (to the extent permitted by law), administrative, investigative or otherwise, (ii) formal or informal or (iii) by or in the right of the Company, other than a proceeding arising out of a dispute subject to resolution as provided in Section 16.12 (collectively, a "proceeding"), by reason of the fact that a Member or Protected Party was a Member, officer, employee or agent of the Company or an officer, employee, or agent of a Member acting in the capacity as a Member of the Company. Whenever the basis of such proceeding is alleged action in such capacity as a Member, officer, employee or agent of the Company, the Member or Protected Party shall be indemnified and held harmless by the Company against all judgments, penalties and fines (to the extent permitted by law) incurred or paid, and against all expenses (including attorneys' fees) and settlement amounts reasonably incurred or paid, in connection with any such proceeding; provided, however, that there shall be no indemnification of any such Member or Protected Party as to matters in respect of which it shall be finally adjudged in such action that such Member or Protected Party has committed an act of fraud, deceit or other willful misconduct, and no Member shall be indemnified in connection with a breach by such Member of this Agreement. Until such time as such a final judgment has been entered, a Member or a Protected Party shall be presumed to be entitled to be indemnified and held harmless under this Section 10.4(a). Any indemnity under this Section 10.5(a) shall be provided out of and to the extent of Company assets only, and no Member shall have any personal liability with respect to such indemnity
- (b) Advancement of Expenses. The right to indemnification conferred in this Section 10.4 shall include the right to require the Company to pay the expenses (including attorneys' fees) reasonably incurred in defending any such proceeding in advance of its final disposition subject to a written undertaking by the Member or

Protected Party to reimburse the Company in the event it is finally determined that the Member or Protected Party is not entitled to indemnification.

- (c) Non-Exclusivity of Rights. The right to indemnification conferred in this Section 10.4 shall not be exclusive of any other right which any Member or Protected Party may have or hereafter acquire under any statute, any provision of this Agreement or of any contract, agreement, or insurance policy or arrangement, or any vote of the Members (acting through the Board), or otherwise. The Executive Committee is expressly authorized to adopt and enter into indemnification agreements for Members and officers and other Protected Parties.
 - (d) Insurance. The Executive Committee may cause the Company to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a Governor, officer, employee or agent of the Company or is or was serving at the request of the Company as a Governor, manager, or officer, including service with respect to employee benefit plans, against any liability asserted against such person and incurred in any such capacity or arising out of such status.
 - (e) Effect of Amendment. No amendment, repeal or modification of this Section 10.4 shall adversely affect any right or protection provided hereby with response to any act or omission occurring prior to the date when such amendment, repeal or modification became effective.
 - (f) Reimbursement. It shall be a condition to any indemnification or advancement of expenses under this Section 10.4 that if it is subsequently determined that a Protected Party acted illegally or in a manner not authorized by the Company or otherwise in a manner that does not entitle the Protected Party to indemnification under this Agreement, then such person shall immediately reimburse the Company for all fees and expenses paid on that person's behalf. Similarly, there will be no duty to indemnify or reimburse any Member or Protected Party for a judgment or other legal or administrative determination if such judgment or determination is based upon a finding of an illegal act or an act not authorized by the Company.
- 10.5 Cross Indemnification Among Members. In the event any Member incurs a cost or liability arising from a claim or litigation resulting from a Performance Guarantee provided to DOE/NNSA, or a guarantee provided to another third party and entered into with the consent of all Members in accordance with this Agreement, or as a result of any other action taken on behalf of the Company with the consent of the other Members; and either (i) such cost or liability is not a cost or liability of the Company for which the Member would be indemnified by the Company under Section 10.4 or (ii) the Company has insufficient assets to satisfy its indemnification obligation with respect to such cost or liability, each of the other Members agrees to indemnify the Member for the portion of such cost or liability that equals such Member's Retained Earnings Percentage.
- 10.6 No Exclusive Duty to Company. Governors and other appointed representatives of the Company need not be required to manage the Company as their sole and exclusive function. The Members may have other interests and may engage in other activities in addition to those relating to the Company, provided that such activities shall not conflict with the provisions of Section 3.1 or violate the provisions of Section 16.15 of this Agreement. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other interests or activities of a Member,

Governor or other appointed representative, or to the income or proceeds derived therefrom. No Member, Governor or other representative shall incur liability to the Company or to any Member solely by reason of engaging in any other interest or activity permitted by this Section.

- 10.7 Survival. The provisions of this Article X shall survive the dissolution or a termination of the Company, or the transfer of any Member's interest in the Company as it relates to matters that occurred prior to such transfer.

Article XI Capital Accounts

- 11.1 Members' Capital Contributions. After announcement that the Prime Contract will be awarded to the Company, the University and Bechtel shall contribute equal amounts as they determine are needed for the initial capital of the Company as their respective Initial Capital Contributions. Any entity that may be admitted as a Member after the date of the formation of the Company shall be required to contribute an Initial Capital Contribution as determined by the Members already admitted.

- 11.2 Additional Capital Contributions.

- (a) To Fund Net Loss or Expenses. If, for any Fiscal Year or Other Period, and after taking into account available Reserves, UC and Bechtel determine that additional capital is needed by the Company to fund an actual or anticipated Net Loss or expenses, the Company shall deliver a written notice to each Member setting forth the aggregate amount of capital needed by the Company, the proportionate shares of such additional capital for each of UC and Bechtel which shall have been contributed to the Company as of the time such notice is given, and the proportionate shares to be paid by WG and BWXT (based on the percentages set forth below). Within 10 days of receipt of such notice, WG and BWXT shall be obligated to make a Capital Contribution to the Company in the amount specified in such notice. For purposes of this Section 11.2(a), each Member's proportionate share of any additional needed capital shall be in accordance with such Member's Retained Earnings Percentage. Each Capital Contribution pursuant to this Section 11.2(a) shall not affect the Capital Percentages of the Members. Capital Contributions required by this Section 11.2(a) shall be made by means of a certified or cashier's check or by wire transfer of funds to an account designated by the Company.
- (b) Other. Except as provided in Section 11.1 and 11.2(a), no Member shall be required to make additional Capital Contributions to the Company without their prior written consent and no Member shall be permitted to make additional Capital Contributions to the Company without the consent of the University and Bechtel.
- (c) No Third Party Beneficiaries. None of the terms, covenants, obligations or rights contained in this Section 11.2 is or shall be deemed to be for the benefit of any person other than the Members and the Company. The provisions of this Agreement, including, without limitation, this Section 11.2, are intended solely to benefit the Members and their Affiliates and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the

Company, and no such creditor of the Company shall be a third-party beneficiary of this Agreement, and no Member or Governor shall have a duty or obligation to any creditor of the Company to issue any call for capital pursuant to this Section 11.2.

11.3 Capital Accounts. A separate Capital Account will be maintained for each Member in accordance with this Section 11.3.

- (a) The Capital Account of each Member shall be maintained in accordance with the following provisions:
 - (i) To such Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's allocated share of Net Income, any items of income or gain that are specially allocated to such Member, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company assets distributed to such Member; and
 - (ii) To such Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company assets (other than cash) distributed to such Member, such Member's allocated share of Net Loss, any items of deduction or loss that are specially allocated to such Member, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.
- (b) If the Executive Committee elects to adjust the Gross Asset Value of Company Property upon the occurrence of certain events as permitted by this Agreement, the Company shall adjust the Capital Accounts of each of the Members to reflect such revaluation on the Company's books. The Capital Accounts shall be adjusted to reflect the manner in which the unrealized income, gain, loss or deduction inherent in such Property would be allocated among the Members pursuant to the terms of this Agreement if there were a taxable disposition of such Property for such Gross Asset Value on that date. Furthermore, the Members, in a manner consistent with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), shall adjust the Capital Accounts as necessary to reflect any items of Net Income or Net Loss that are computed based on the Gross Asset Value of Company Property.
- (c) If any Membership Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest.
- (d) The foregoing provisions of this Section 11.3 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

11.4 Withdrawal or Reduction of Members' Capital Accounts. A Member shall not receive out of the Company's Property any part of its Capital Account until all liabilities of the Company have been paid or there has been reserved or set aside Property of the Company sufficient to pay them. A Member has only the right to receive cash in reduction of its Capital Account, at the times and to the extent determined by the Executive Committee pursuant to Section 8.1.

- 11.5 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contributions or Capital Account or to the return of its Capital Contributions or Capital Account, except as otherwise specifically provided for in this Agreement.
- 11.6 Priority and Return of Capital. Except as otherwise expressly provided in this Agreement, no Member shall have priority over any other Member for the return of its Capital Contributions or as to Net Income, Net Loss or distributions.

Article XII
Allocations of Net Income and Net Loss; Distributions;
Elections; Books and Records; and Returns and Reports

- 12.1 Allocations of Net Income and Net Loss. Subject and after giving effect to the limitations and special allocations contained in Exhibit A hereto, Net Income and Net Loss of the Company for each Fiscal Year or Other Period shall be allocated to the Members in accordance with Exhibit B hereto.
- 12.2 Distributions.
- (a) Except as otherwise provided in Section 15.2 (relating to the dissolution of the Company), any distributions of Distributable Cash or other Property shall be made by the Company to the Members in accordance with the following:
- (i) First, in accordance with the Members' Retained Earnings Percentages, until the Unreturned Additional Capital of the Members has been reduced to zero;
- (ii) Second, 50% to the University and 50% to Bechtel until the cumulative amount distributed pursuant to this Section 12.2(a)(ii) equals the aggregate Initial Capital Contributions of such Members; and
- (iii) Thereafter, in such proportions as is necessary to cause the Capital Account balances of the Members to be, as near as possible, in proportion to their respective Retained Earnings Percentages immediately after giving effect to such distribution. In the event the Capital Account balances of all Members have been reduced to zero, any further distributions shall be in accordance with the Members' Retained Earnings Percentages.
- (b) Subject to the limitation contained in Section 12.3, all distributions of cash or other Property shall be made at such times as determined by the Executive Committee pursuant to Section 8.1.
- 12.3 Limitations Upon Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any distribution to any Member unless, after giving effect to such distribution, the assets of the Company will be in excess of all liabilities of the Company (except liabilities for which the recourse of creditors is limited to specific Property of the Company). For purposes of the immediately preceding sentence, the fair value of Company Property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the Company only to the extent the fair value of that Property exceeds that liability. Notwithstanding any provision to the contrary contained in this Agreement, the Company, and the Members on behalf of the Company, shall not make a distribution to any Member on account of its Economic Interest in the Company if such distribution would violate Section 18-607 of the Delaware Act or other applicable law.

- 12.4 Withholding. The Company shall at all times be entitled to withhold taxes, including applicable U.S. withholding taxes, or other governmental charges from distributions or allocations to some or all of the Members to discharge any such withholding obligation of the Company. The determination of whether the Company is subject to a withholding obligation shall be made by the Board in its reasonable discretion after consultation with the Company's tax advisor and the affected Member. Any amount required to be withheld in respect of a Member shall be (a) treated as a distribution by the Company to such Member and (b) subtracted from such Member's Capital Account. In accordance with the preceding sentence, in the case of a withholding tax imposed on distributions, any amount withheld by the Company in respect of a Member shall be treated as a portion of the distribution to which it most closely relates (as determined by the Board in its sole discretion). In the case of a withholding tax imposed on allocations, any amount withheld shall be treated as a special distribution by the Company to such Member on the date of the allocation to which it most closely relates (as determined by the Board in its sole discretion). Notwithstanding the foregoing provisions of this Section 12.4, if and to the extent that the treatment of any withholding taxes in respect of a Member as a distribution would cause such Member to have a deficit Capital Account balance, the amount of such withholding taxes shall be treated as a loan by the Company to such Member due not later than the date on which the Company is liquidated.
- 12.5 Accounting Method. For both financial and tax-reporting purposes, the books and records of the Company shall be kept on the accrual method of accounting.
- 12.6 Books and Records, Audits and Reports.
- (a) At the expense of the Company, the Board of Governors shall maintain or cause to be maintained proper and complete books and records in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in the detail and completeness customary and appropriate for businesses of the type engaged in by the Company.
 - (b) The Company's government accounts shall be audited in accordance with the requirements of the Contract and applicable DOE Orders.
 - (c) The Company's annual financial statements, including but not limited to the determinations of Distributable Cash, shall be available for examination by the Company's internal auditors and/or a firm of certified public accountants. The fact that any certified public accountants may examine, review or audit the financial statements of one or more of the Members or their Affiliates shall not disqualify such accountants from reviewing or examining the Company's financial statements.
 - (d) At a minimum the Company shall keep at its principal executive office the following records:
 - (i) A current list of the full name and last known business, residence, or mailing address of each Member, both past and present;
 - (ii) A copy of the Certificate of Formation of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment to the Certificate of Formation has been executed;
 - (iii) A copy of this Agreement fully executed by the Members, and any amendments hereto;
 - (iv) Copies of the Company's federal, state, and local income tax and/or property-tax returns and reports, if any, for the seven most recent Fiscal Years;

- (v) Copies of the Company's currently effective written agreements, copies of any writings relating to a Member's obligation, if any, to contribute to the Company cash or other property pursuant to Section 11.2, and copies of books and records of account and any financial statements of the Company for the seven most recent Fiscal Years;
 - (vi) Minutes of every meeting of the Board of Governors;
 - (vii) Any written consents of the Governors for actions taken without a meeting; and
 - (viii) Such other books and records as may be required by the Delaware Act.
- (e) The Company shall provide to each of the Members:
- (i) Not later than thirty (30) days after the end of each month of the Company's Fiscal Year, an un-audited balance sheet of the Company as of the end of such month and the related statement of income and cash flows for such month, each in such detail as may be necessary for the Members' respective financial reporting purposes; and
 - (ii) Not later than 30 days after the end of each Fiscal Year, a Balance Sheet of the Company as of the end of such Fiscal Year, and related Statements of Income, Members' equity and cash flows for such Fiscal Year, in such detail as may be necessary for the Members' respective financial reporting purposes shall be provided to the Members.
 - (iii) Not later than 90 days after the end of each Fiscal Year, the results of an Agreed-to-Procedures engagement shall be provided to the LLNS, LLC Ethics and Audit Committee. The Ethics and Audit Committee shall present to the Executive Committee the findings and results of the engagement. The engagement shall be performed by a firm of certified public accountants.
- (f) Access to Company Records, Facilities and Work Locations. Upon reasonable request, each Member or its duly authorized representatives shall have the right, at the Member's expense and during ordinary business hours, to inspect, copy and audit the Company's records, to inspect facilities and work locations, and to determine compliance with federal, state and local laws and regulations and the Prime Contract terms and conditions.

12.7 Tax Returns and Elections.

- (a) The Executive Committee shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the IRC and all other tax returns deemed necessary and required in each jurisdiction in which the Company may be required to file a return. As soon as practical after the end of each Fiscal Year, the Company shall supply copies of all federal, state, and local income tax returns to the Members for their review thirty (30) days prior to the filing thereof with the appropriate Government agencies. In preparing such returns, the Company shall reasonably consult with the Members.
- (b) It is the intention of the Members that the Company be classified as a partnership, and not as an association taxable as a corporation, for federal income tax purposes. The provisions of this Agreement shall be interpreted in a manner consistent with such intention. No election shall be made by or on behalf of the Company that would result in the Company's being classified as other than a partnership for federal income tax purposes without the unanimous approval of the Members.

12.8 Tax Matters Partner.

- (a) Bechtel is hereby appointed as the initial “Tax Matters Partner” of the Company within the meaning of Section 6231(a)(7) of the IRC. The appointed Tax Matters Partner shall act in good faith in fulfilling the responsibilities of a Tax Matters Partner under the IRC, the Treasury Regulations and pursuant to this Agreement, and in fulfilling any similar role under state, local or foreign law.
- (b) The Tax Matters Partner shall promptly take such action as may be necessary to cause the University, and in the event the Tax Matters Partners is someone other than Bechtel, to cause Bechtel to become a "Notice Partner" within the meaning of Section 6231(a)(8) of the IRC. The Tax Matters Partner shall keep all Notice Partners informed of all material matters that may come to its attention in its capacity as Tax Matters Partner by giving Notice Partners notice thereof within 15 days after it becomes informed of any such matter or within such shorter period as may be required to comply with any appropriate statutory or regulatory provisions. The Tax Matters Partner shall furnish Notice Partners copies of all written communications from the Internal Revenue Service within 15 days after the receipt thereof or within such shorter period as may be required to comply with any appropriate statutory or regulatory provisions. The Tax Matters Partner shall also provide Notice Partners with reasonable advance notice of meetings and conferences with the Internal Revenue Service so that Notice Partners will have a reasonable opportunity to participate in such meetings and conferences. Without limiting the generality of the foregoing, each Member shall give to the other Members prompt notice of receipt of any written notice that the Internal Revenue Service or any other taxing authority intends to examine any federal, state, local or foreign tax return, or the books and records of the Company.
- (c) The Tax Matters Partner, in its capacity as such, shall not take any action contemplated by Section 6222 through Section 6233, inclusive, of the IRC without the approval of all Members; provided, however, that nothing contained herein shall be construed to limit the ability of the Tax Matters Partner to take any action under Section 6222 through Section 6233, inclusive, of the IRC that is left to the determination of a Member so long as such action is not legally binding on another Member or the Company. Without limiting the generality of the foregoing, the Tax Matters Partner shall not, and shall have no power to, enter into any extension of the period of limitations for making assessments on behalf of another Member, or any settlement agreement that binds another Member.
- (d) If a Member enters into a written settlement or closing agreement with the Internal Revenue Service with respect to any partnership tax item in respect of the Company, it shall notify the other Members of such agreement and its terms at least 10 days prior to the execution of such written agreement.
- (e) The provisions of this Section 12.8 shall survive the termination of the Company, and shall remain binding on the Members for a period of time necessary to resolve with the Internal Revenue Service or other taxing authority any and all tax matters of the Company.

Article XIII
Transferability

- 13.1 General. Except as provided herein, no Member may Transfer all or any part of its Membership Interest in the Company, including its Ownership Interest, except with the prior written consent of each of the other Members, which consent may be granted or withheld in such other Members' sole discretion.
- 13.2 Change in Control of a Member.
- (a) In the event that Bechtel ceases to be a privately held company owned and controlled directly or indirectly by the Bechtel family and its senior management personnel, at the sole discretion of the University, Bechtel shall be considered as having withdrawn and resigned from the Company and its Membership Interest shall be terminated upon redemption by the Company to Bechtel of its Capital Interest existing at the time of such transfer for a purchase price equal to the positive balance, if any, of Bechtel's Capital Account. Provided further that Bechtel's rights to participate in the management and sharing of profits and losses transferred in accordance with Exhibit D shall continue to be exercised by WG and BWXT as provided therein.
 - (b) In the event a controlling interest in the University is transferred outside of the Board of Regents, at the sole discretion of Bechtel, the University shall be considered as having withdrawn and resigned from the Company and its LLC Interest and Ownership Interest shall be terminated upon redemption by the Company to the University of its Capital Interest existing at the time of such transfer for a purchase price equal to the positive balance, if any, of the University's Capital Account.
 - (c) In the event that there is a sale, assignment, transfer, exchange, pledge, encumbrance, or other disposition of WG's interest in any manner, in whole or in part, whether voluntary or involuntary, or by operation of law or otherwise, including change in the ownership structure of a WG due to a sale or transfer of a substantial portion of the WG's stock or assets from its current holder(s) to an unrelated third party without the express prior written consent of Bechtel and the University, WG shall cease to have any right to participate in the profits of or the management of the Company upon redemption by the Company to WG of its Capital Interest existing at the time of such transfer for a purchase price equal to the positive balance, if any, of WG's Capital Account, and any obligations of Bechtel or the Company to WG under Exhibit C shall be deemed void.
 - (d) In the event that there is a sale, assignment, transfer, exchange, pledge, encumbrance, or other disposition of BWXT's interest in any manner, in whole or in part, whether voluntary or involuntary, or by operation of law or otherwise, including change in the ownership structure of BWXT due to a sale or transfer of a substantial portion of the BWXT's stock or assets from its current holder(s) to an unrelated third party without the express prior written consent of Bechtel and the University, BWXT shall cease to have any right to participate the profits of or in the management of the Company upon redemption by the Company to the BWXT of its Capital Interest existing at the time of such transfer for a purchase price equal to the positive balance, if any, of BWXT's Capital Account, and any obligations of Bechtel or the Company to BWXT under Exhibit C shall be deemed void.
 - (e) With respect to Articles 13.2(c) and (d) above, either:

1. The University and Bechtel may withhold consent only when acting jointly, which consent shall not be unreasonably withheld by either the University or Bechtel with agreement of the other; or, alternatively,
 2. Bechtel, in its sole discretion, may withhold consent; provided the Member subject to a change of control, either BWXT or WG as the case may be, or its successor, shall have no LLC Interest but shall continue to receive allocations of profits equivalent to that which it would have received had it remained a Member of (A) 100% for the first fifteen years from award of the Prime Contract and (B) 50% for the next five years thereafter. As a condition of such payments,
 - a) The party receiving the cash distributions must agree to bear the same share of liabilities and losses of the Company as BWXT or WG, as the case may be, would have borne had there been no change of control; and
 - b) For a period of two years, such party receiving distributions, BWXT or WG, as the case may be and its affiliates or its successor and its affiliates shall not recruit or hire any employees of the LLC that had been assigned to the Company by that Member and shall comply with Section 16.21 with respect to employees of the Company assigned by the other Members.
- 13.3 Purported Transfer Void. The Transfer or purported Transfer of a Membership Interest, Ownership Interest or Limited Liability Company Interest which does not comply with the provisions of this Article XIII shall be void, and shall not be given effect by the Company or any other entity.
- 13.4 Consent to Withdraw Required. A Member shall not voluntarily or involuntarily resign or withdraw as a Member of the Company, except with the prior written consent of the other Members, which consent may be granted or withheld in such other Members' sole discretion.
- 13.5 Bankruptcy. Upon the Bankruptcy of any Member, the Company shall have the right, but not the obligation, to purchase all of such Member's interest in the Company for a purchase price equal to the positive balance, if any, in such Member's capital account as of the last day of the month prior to the date that the Company becomes aware of such Bankruptcy. The Company shall exercise its right to purchase such Member's interest in the Company by written notice to the Member in Bankruptcy within 120 days after the Company becomes aware of such Bankruptcy. The purchase of such Member's interest shall be consummated on a date designated by the Company that occurs within 30 days after the date of such notice. If there is a zero or negative balance in the bankrupt Member's capital account as of the last day of the month prior to the date that the Company becomes aware of such Bankruptcy, then the purchase price for such Member's interest shall be zero. The Member in Bankruptcy shall execute and deliver all documents or instruments reasonably requested by the Company in order to effectuate the sale of such Member's entire interest in the Company in accordance with this Section 13.5.

- 13.6 Debarment of a Member. In the event a Member is Debarred by the U.S. Government, the Member will be treated as having withdrawn from the Company with the consent of the other Members under Section 13.4, and the only obligation of the Company to Debarred Member shall be the redemption by the Company to the withdrawing Member of its Capital Interest existing at the time of such withdrawal for a purchase price equal to the positive balance, if any, in such Member's Capital Account.

Article XIV Additional Members

- 14.1 Admission to Membership. After the execution of this Agreement, no third party shall be admitted as a party to this Agreement or as a prospective member of the Company except by the consent and action of all Members to this Agreement, which consent may be granted or denied in a Member's sole discretion. After formation of the Company, no third party shall be admitted as a member of the Company except by the consent and action of all Members of the Company then admitted, which consent may be granted or denied in a Member's sole discretion. Admission of a third party as a member of the Company shall be either by the issuance by the Company of a Membership Interest for such Initial Capital Contribution as the Members shall determine, or as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Agreement.

Article XV Dissolution and Termination

- 15.1 Dissolution.
- (a) (i) The Company shall be dissolved and its affairs wound up upon the occurrence of any of the following events:
 - (A) By the written agreement of each Member; or
 - (B) The entry of a decree of judicial dissolution pursuant to Section 18-802 of the Delaware Act.
 - (C) At the expiration of the term of the Company as set forth in Section 2.5.
 - (ii) The Bankruptcy of a Member shall not cause a Member to cease to be a Member of the Company, and upon the occurrence of such an event, the business of the Company shall be continued without dissolution. The retirement, resignation, expulsion or dissolution of a Member, or the occurrence of any other event under the Delaware Act that terminates the continued membership of a Member in the Company, shall not cause the Company to be dissolved or its affairs wound up, and, upon the occurrence of any such event, the business of the Company shall continue without dissolution.
 - (b) Upon the dissolution of the Company, the Board of Governors shall promptly notify the Members of such dissolution.

- 15.2 Winding Up, Liquidation, and Distribution of Assets. Upon dissolution, an accounting shall be made by the Board of the Company's assets, liabilities, and operations, from the date of the last previous accounting until the date of dissolution. The Board shall immediately proceed to wind up the affairs of the Company. If the Company is dissolved and its affairs are to be wound up, the Board shall
- (a) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Executive Committee may determine to distribute any assets to the Members in kind);
 - (b) Allocate Net Income, Net Loss, and any items of income, gain, loss or deduction resulting from such sales to the Members' Capital Accounts in accordance with Article XII above and Exhibits A and B hereto;
 - (c) Discharge all debts, liabilities and obligations of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, and establish such Reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company, and upon the termination of such Reserves, the amount of such Reserves shall be distributed to the Members in the manner provided in Subsection (d) of this Section 15.2;
 - (d) Distribute to the Members the remaining proceeds of liquidation in accordance with their respective positive Capital Account balances, after giving effect to all contributions, distributions and allocations for all periods. For the purpose of determining the amount distributed to each Member, any Property distributed in kind in the liquidation shall be valued at Gross Asset Value, and such Property shall be treated as though the Property had been sold by the Company for such Gross Asset Value and the cash proceeds distributed to the Members.
 - (e) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Treasury Regulation § 1.704-1(b)(2)(ii)(g), if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations, and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other entity for any purpose whatsoever.
 - (f) Upon completion of the winding up, liquidation, and distribution of the assets, the Company shall be deemed terminated for tax purposes.
 - (g) The Board of Governors shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.
- 15.3 Certificate of Cancellation. When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefore and all of the remaining property and assets have been distributed to the Members, a Certificate of Cancellation shall be executed, which Certificate shall set forth the information required by the Delaware Act. The Certificate of Cancellation shall be filed with the Delaware Secretary of State. Upon the filing of the Certificate of Cancellation, the existence of the Company shall cease. The Board shall have authority to distribute any Company property discovered after dissolution, convey real estate, and take such other action as may be necessary or appropriate on behalf of and in the name of the Company.

- 15.4 Return of Contribution Non-recourse to Other Member(s). Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contributions or Capital Account. If the Company assets remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contributions or Capital Account of one or more Members, the Members shall have no recourse against the Board or any other Member.

Article XVI

Miscellaneous Provisions

- 16.1 Further Assurances. At any time and from time to time after the date of this Agreement, each Member will, upon the reasonable request of the other Member, perform, execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances and assurances as may be reasonably required to effect or evidence the transactions contemplated hereby.
- 16.2 Reserved.
- 16.3 Application of Delaware Law. This Agreement, and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware, and specifically the Delaware Act.
- 16.4 Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the Property of the Company.
- 16.5 Entire Agreement. Except for any agreement that is executed by the signators to this Agreement concurrently herewith and is effective concurrently herewith, this Agreement constitutes the entire agreement of the Members relating to the subject matter hereof and supersedes all prior or existing contracts or agreements, oral or written, and there are no representations, agreements, arrangements or understandings, oral or written, between or among the Members relating to such subject matter that are not fully expressed in this Agreement. Specifically, and except to the extent provided in Section 16.6, this Agreement supersedes the teaming agreement entered into between the University and Bechtel effective May 9, 2006, and the teaming agreement entered into between Bechtel, BWXT and WG effective May 15, 2006 (collectively referred to below as the “Teaming Agreements”).
- 16.6 Proposal Preparation Costs. Notwithstanding Section 16.5, the provisions on sharing of Proposal Preparation Costs contained in the Teaming Agreements shall survive the execution of this Agreement. Pursuant to those Agreements, third party Proposal Preparation Costs are not to be considered expenses of the Company and are to be borne by the Members or other persons in accordance with the terms of the Teaming Agreements. Pursuant to those Agreements, third party Proposal Preparation Costs shall be borne 34.5% by the University, 45.5% by Bechtel, 10% by WG and 10% by BWXT. To the extent such costs are paid by the Company, the amount of such costs will be deducted from the distributions or other amounts otherwise payable by the Company to the benefiting Member or other person, or will be paid by the Member or other person to the Company for the purpose of reimbursing such costs.

- 16.7 Amendment. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented or modified orally, except by an instrument in writing signed by the Members.
- 16.8 Effect of Waiver or Consent. No waiver or consent, express implied or given by the Company or any party of or to any breach or default by the Company or any party in the performance by the Company or such party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by the Company or such party of the same or any other obligations of the Company or such party hereunder. No single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce any right or power, shall preclude any other or further exercise thereof or the exercise of any other right or power. Failure on the part of the Company or a party to complain of any act of any Member or to declare the Company or any Member in default, irrespective of how long such failure continued, shall not constitute a waiver by the Company or such Member of its rights hereunder until the applicable statute of limitation period has run.
- 16.9 Facsimiles. For purposes of this Agreement, any copy, facsimile telecommunication or other reliable reproduction of a writing, transmission or signature may be substituted or used in lieu of the original writing, transmission or signature for any and all purposes for which the original writing, transmission, or signature could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, transmission or signature, as the case may be.
- 16.10 Limitation on Rights of Others. Nothing in the Agreement, whether express or implied, shall be construed to give any entity (other than the Members hereto and their respective legal representatives, and permitted successors and assigns as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein, as a third party beneficiary or otherwise. Without limiting the generality of the foregoing, none of the provisions of the Agreement shall be for the benefit of, or enforceable by, any creditors of the Company or any other entity. Except and only to the extent provided by applicable statute, no such creditor or other third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.
- 16.11 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Members may have by law, statute, ordinance, or otherwise.
- 16.12 Dispute Resolution. If any dispute arising out of this Agreement cannot be resolved by the Members' designated representatives on the Executive Committee, the Members agree to resolve the dispute as follows:
- (a) The dispute shall first be submitted to the Chief Executive Officer of Bechtel Corporation, the Chair of the Board of Regents of the University of California, and the Chief Executive Officers of WG and BWXT for their review and resolution in such manner as they deem necessary or appropriate.
 - (b) In the event such individuals fail to reach unanimous agreement, the Members agree to submit such dispute to binding arbitration in accordance with the procedures of the American Arbitration Association, or other organization

mutually acceptable to the Members. Such arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Sec. 1-16, and judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

- 16.13 Successors and Assigns. Each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon and inure to the benefit of the Members hereto and, to the extent permitted by this Agreement, their respective legal representatives, successors, and assigns.
- 16.14 Authorization and Enforceability. Each of the initial Members represents and warrants to each of the other initial Members that this Agreement has been duly authorized, executed and delivered by that Member and constitutes a valid and legally binding agreement of that Member, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization and similar laws and to general equity principles.
- 16.15 Confidentiality. All proprietary information of the Members shall be protected in accordance with the Non-Disclosure Agreement that appears at Exhibit G to this agreement.
- 16.16 Investment Representations.
- (a) The Members understand:
 - (i) that the Membership Interests as evidenced by this Agreement have not been registered under the Securities Act of 1933, 15 U.S.C. § 77a et seq., the Delaware Securities Act or any other state securities laws (the “Securities Act”) because the Company is issuing such Membership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts relating to the issuance of securities not involving a public offering;
 - (ii) that the Company has relied upon the fact that the Membership Interests are to be held by each Member for investment; and
 - (iii) that exemption from registration under the Securities Acts would not be available if the Membership Interests were acquired by a Member with a view to distribution.
 - (b) Each Member hereby confirms to the Company that the Member is acquiring its Membership Interest for the Member's own account, for investment and not with a view to resale or distribution.
- 16.17 Public Announcements. During the pendency of the Competition, and except as may be required by law, none of the Members shall make any public announcement or filing with respect to the transactions provided for herein without the prior written consent of the other Member(s) hereto, which shall not be unreasonably withheld. The Members agree that, following the completion of the Competition, the University intends to release this Agreement and/or the Teaming Agreement between UC and Bechtel.
- 16.18 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory Members had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument.
- 16.19 Rules of Construction. Unless the context otherwise requires:
- (a) A term has the meaning assigned to it;
 - (b) An accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
 - (c) “Or” is not exclusive;

- (d) References in the singular or to “him”, “her”, “it”, “itself”, or other like references, and references in the plural or the feminine or masculine reference, as the case may be, shall also, when the context so requires, be deemed to include the plural or singular, or the masculine or feminine reference, as the case may be;
- (e) Provisions apply to successive events and transactions;
- (f) References to Articles and Sections shall refer to articles and sections of this Agreement, unless otherwise specified;
- (g) The headings in this Agreement are for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof; and
- (h) This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Member or Members that drafted or caused this Agreement to be drafted.

16.20 Effect of Agreement; Severability and Reformation. It is the express intention of the Members that, except to the extent a provision of this Agreement expressly incorporates Federal income tax rules by reference to the IRC or the Treasury Regulations or is expressly prohibited or ineffective under the Delaware Act, this Agreement shall govern the relations among the Members in their capacities as such. If any provision of this Agreement or the application thereof to any entity or circumstance shall be held invalid or unenforceable to any extent, (a) such provision shall be ineffective to the extent, and only to the extent, of such unenforceability or prohibition and shall be enforced to the extent permitted by law; (b) such unenforceability or prohibition in any jurisdiction shall not invalidate or render unenforceable such provision as applied (i) to other entities or circumstances or (ii) in any other jurisdiction; and (c) such unenforceability or prohibition shall not affect or invalidate any other provision of this Agreement. To the extent any provision of this Agreement is prohibited or ineffective under the Delaware Act, the Agreement shall be considered amended to the least degree possible in order to make this Agreement effective under the Delaware Act. In the event the Delaware Act is subsequently amended or interpreted in such a way as to make valid any provision of the Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. To the extent any provision of this Agreement is held invalid or unenforceable, the Members shall negotiate, in good faith, concerning an amendment to this Agreement that will achieve, to the extent possible consistent with applicable law, the intended effect of the invalid or unenforceable provision.

16.21 Limitation on Personnel Recruitment. Each Member agrees that it will not recruit or otherwise employ for its other work any employee of another Member or its affiliates while assigned as Key Personnel or other personnel of the Company and for a period of twelve (12) months thereafter. Provided however, that no Member will be precluded from hiring any such employee who: (i) initiates discussions regarding such employment without any direct or indirect solicitation by the hiring Member; (ii) responds to any public advertisement placed by a hiring Member; or (iii) has been terminated by an employing Member or its subsidiaries prior to commencement of employment discussions between a Member and such employee. Violations of this Section shall be specifically enforceable only and shall not be deemed a material breach of this Agreement.

16.22 Licensing Income. To the extent that the Company receives income from licensing of intellectual property, which income is permitted to be retained by the Company and is not required to be expended at the Laboratory by Clause I-107 or other provisions of the Prime Contract, to the maximum extent feasible and consistent with the terms of the Prime Contract the Members shall be entitled to share in such income consistent with other profits of the Company. The Members shall also be entitled to in the benefit of any intellectual property rights that inure to the benefit of affiliates of the Company under the terms of the Prime Contract.

16.23 Breach of the Agreement.

- (a) In the event any Member believes that another Member has committed a material breach of its obligations under this Agreement, such Member shall provide written notice of such breach to all of the other Members. Upon agreement of each of the other Members, the Company will declare the allegedly breaching Member to be in default.
- (b) Upon the occurrence of any such default which is not cured within thirty (30) days, the Member found to be in default:
 - (i) shall have no management rights with respect to the Company except with respect to Section 6.2 (a)(1), including no right to appoint or nominate any Governor or have its appointed Governor(s) vote on any matter coming before the Executive Committee, and for the purposes of such votes;
 - (ii) shall have no right to vote on any action requiring approval of the Members except with respect to Section 6.2 (a)(1);
 - (iii) shall have no right to distribution of any amounts in its Capital Account, while however not forfeiting amounts earned or prorated as of the date of the declaration of default;
 - (iv) shall, after the date of default, forfeit its right to any future allocations of Net Income to its Capital Account.
- (c) Except for Consequential Damages, the defaulting member shall be liable for any losses sustained by the other Members or which are incurred by the Company as a result of such default. The Member in breach shall continue to be liable for any losses or liabilities of the Company in accordance with the terms of this Agreement. Notwithstanding the waiver of Consequential Damages in Article 16.24, the Member in breach shall be liable for a reduction in any fees earned under the Contract attributable to the default, limited by amounts in the Capital Account of the Member in breach.

16.24 Consequential Damages.

In no event shall any Member or the Company be liable to any other Member for Consequential Damages, however caused, whether as a consequence of fault, negligence, strict liability, breach of contract or otherwise.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered in its name and on its behalf as of the dates indicated below.

The Regents of the University of California

By: _____ Date: _____
Name: Gerald L. Parsky
Title: Chairman of the Board of Regents
The Regents of the University of California

Bechtel National, Inc.

By: _____ Date: _____
Name: David Walker
Title: President, Bechtel National, Inc.

BWX Technologies, Inc.

By: _____ Date: _____
Name: John A. Fees
Title: President, BWX Technologies, Inc.

Washington Group International, Inc.

By: _____ Date: _____
Name: E. Preston Rahe, Jr.
Title: President of Energy and Environment, Washington Group International, Inc.

EXHIBIT A

TAX PROVISIONS

For purposes of interpreting and implementing the Agreement, the following shall apply and shall be treated as part of the terms of the Agreement:

Part A. Definitions

- (1) Capitalized terms used but not defined in this Exhibit A shall have the meanings ascribed to such terms in the Agreement.
- (2) The following terms used in this Exhibit A and in the Agreement shall have the following meanings (unless otherwise expressly provided herein):
 - (a) “Adjusted Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year or Other Period, after giving effect to the following adjustments:
 - (i) The Capital Account shall be increased by any amounts that such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and
 - (ii) The Capital Account shall be decreased by the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of "Adjusted Deficit" is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.
 - (b) “Company Minimum Gain” means the same as "partnership minimum gain" as set forth in Treasury Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

Part B. Special Allocations and Other Allocation Rules

- (1) Special Allocations.
 - (a) Loss Limitation. Notwithstanding the allocation of Net Loss pursuant to Section 12.1, the amount of Net Loss allocated to any Member shall not exceed the maximum amount of Net Loss that can be so allocated without causing any Member to have an Adjusted Deficit at the end of any Fiscal Year or Other Period. In the event some but not all of the Members would have Adjusted Deficits as a consequence of an allocation of Net Loss pursuant to Section 12.1, the limitation set forth in this Subsection (a) shall be applied on a Member-by-Member basis so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). To the extent Net Loss is subject to the limitation contained in this Subsection (a) and reallocated to other

- Members, items of income or gain shall be subsequently allocated to such other Members to the extent and in reverse order of the Net Loss so reallocated for the purpose of offsetting the effect of this Subsection (a).
- (b) Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Agreement, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Subsection (b) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.
 - (c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Subsection (c) shall be made only if and to the extent that such Member would have an Adjusted Deficit after all other allocations provided for in this Exhibit A, Part B have been tentatively made as if this Subsection (c) were not in this Agreement.
 - (d) Nonrecourse Deductions. "Nonrecourse deductions," as defined in and determined under Treasury Regulations Sections 1.704-2(b)(1) and (c), shall be allocated among the Members in proportion to their respective Capital Percentages.
 - (e) Unshared Unallowable Costs. Items of loss or deduction attributable to Unshared Unallowable Costs, to the extent incurred by the Company shall be specially allocated to those Members who are responsible for bearing such Unshared Unallowable Costs, in accordance with Exhibit H to this Agreement.
 - (f) Proposal Preparation Costs. Items of loss or deduction attributable to Proposal Preparation Costs, to the extent incurred by the Company, shall be specially allocated to those Members who are responsible for bearing such Proposal Preparation Costs, in accordance with Section 16.6 of this Agreement.
- (2) Other Allocation Rules.
- (a) If during a Company Fiscal Year there is (a) a permitted transfer of a Member's Ownership Interest or (b) the admission of a new Member, then Net Income, Net Loss, each item thereof, and all other tax items of the

Company for such Fiscal Year, shall be divided and allocated among the Members by taking into account their varying interests during such Fiscal Year in accordance with §706(d) of the IRC and using any conventions permitted by law and selected by the Executive Committee.

- (b) For purposes of determining Net Income, Net Loss or any other items allocable to any period, Net Income, Net Loss and any such other items shall be determined on a daily, monthly, quarterly or other basis, as determined by the Executive Committee using any method that is permissible under § 706 of the IRC and the Treasury Regulations thereunder.
 - (c) The Members are aware of the income tax consequences of the allocations contained in the Agreement, including this Exhibit A, and hereby agree to be bound by the provisions of the Agreement, including this Exhibit A, in reporting their share of Company income and loss for income tax purposes.
- (3) Tax Allocations and Section 704 of the IRC.
- (a) In accordance with § 704(c) of the IRC and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.
 - (b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Paragraph (ii) of the definition of "Gross Asset Value" contained in Part A of this Exhibit A, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under § 704(c) of the IRC and the Treasury Regulations thereunder.
 - (c) Any elections or other decisions relating to allocations under this Section (3), including the selection of any allocation method permitted under Treasury Regulation § 1.704-3, shall be made by the Executive Committee in any manner that reasonably reflects the purpose and intention of the Agreement. Allocations pursuant to this Section (3) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Loss, other items or distributions pursuant to any provision of the Agreement.

EXHIBIT B

ALLOCATION BY THE COMPANY OF NET INCOME AND NET LOSS

Net Income and Net Loss of the Company shall be allocated to the Members in proportion to their respective Retained Earnings Percentages set forth in Exhibit D.

EXHIBIT C

ALLOCATION OF CERTAIN NOMINATION RIGHTS

AMONG BECHTEL AND WG AND BWXT

Annually, BWXT and WG shall jointly be entitled to nominate an individual to serve on the Board of Governors. In the event that such individual is reasonably acceptable to Bechtel, Bechtel will appoint him or her to the Executive Committee of the Board of Governors in accordance with Article 7.1(c); provided, however, that the incumbent Governor will be reappointed to serve on an interim basis until a new Governor is approved by Bechtel. In the event that WG and BWXT can not agree on the individual to be nominated, or if that individual is unable to obtain authority to exercise in a timely fashion his or her vote on the Executive Committee, for the purpose of any vote of the Executive Committee, he or she shall be deemed to have abstained on any such vote.

EXHIBIT D

MEMBERS' CAPITAL PERCENTAGES & RETAINED EARNINGS PERCENTAGES

<u>Member</u>	<u>Capital Percentage</u>	<u>Retained Earnings Percentage</u>
The Regents of the University of California 1111 Franklin Street Oakland, CA 94607-5206	50%	36.316%
Bechtel National, Inc. 5275 Westview Drive Frederick, MD 21703	50%	42.456%
Washington Group International, Inc. Energy and Environment 106 Newberry Street, SW Aiken SC 29801	0%	10.614%
BWX Technologies, Inc. 2016 Mt. Athos Road Lynchburg, VA 24504-5447	0%	10.614%
Totals	100%	100%

EXHIBIT E

EXECUTIVE COMMITTEE OF THE BOARD OF GOVERNORS

<u>Name</u>	<u>Address</u>	<u>Phone Number</u>	<u>Fax Number</u>
Appointed by the University of California:			
1. Gerald L. Parsky Chair	Aurora Capital Group 10877 Wilshire Blvd. Suite 2100 Los Angeles, CA	310-551-0101	310-277-5591
2. Marye Anne Fox	University of California San Diego 9500 Gilman Drive La Jolla, CA 92093-0005	858-534-3135	858-534-6523
3. Bruce B. Darling	University of California Office of the President 1111 Franklin Street Oakland, CA 94607-5206	510-987-9444	510-587-6096
Appointed by Bechtel National, Inc.:			
1. Thomas F. Hash Vice Chair	Bechtel National, Inc. 5275 Westview Drive Frederick, MD 21703	240-379-3165	240-379-3186
2. Craig D. Weaver	Bechtel National, Inc. 5275 Westview Drive Frederick, MD 21703	240-379-3189	240-379-3186
3. E. Preston Rahe, Jr.	Washington Group Intl., Inc. 106 Newberry Street, SW Aiken, SC 29801	803-502-9600	803-502-5701

EXHIBIT F

**CERTIFICATE OF FORMATION
OF
LAWRENCE LIVERMORE NATIONAL SECURITY, LLC**

This Certificate of Formation of Lawrence Livermore National Security, LLC (the “Company”) is being executed by the undersigned for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act.

ARTICLE 1. NAME

The name of the Company is: Lawrence Livermore National Security, LLC

ARTICLE 2. REGISTERED OFFICE AND REGISTERED AGENT

The address of the registered office of the Company in Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The registered agent of the Company at that address is The Corporation Trust Company.

ARTICLE 3. MANAGEMENT

The management of the business and affairs of the Company shall be vested in its Members, acting collectively through a Board of Governors as provided in the Company’s Limited Liability Company Agreement. No Member acting individually shall be the agent of the Company or shall have authority to bind the Company.

IN WITNESS WHEREOF, the undersigned, an authorized person of the Company, has caused this Certificate of Formation, which shall become effective upon filing, to be duly executed as of the 27th day of September, 2006.

By: _____
William A. Eklund
Authorized Person

EXHIBIT G

NON-DISCLOSURE AGREEMENT

1. Definitions

- A. “NDA” means this Non-Disclosure Agreement of this Exhibit G, while “Agreement” means the LLC Agreement of which this Exhibit G is a part.

A Member or the Company disclosing PROPRIETARY INFORMATION under this NDA is referred to herein as a Disclosing Entity. A Member or the Company receiving PROPRIETARY INFORMATION under this NDA is referred to herein as a Receiving Entity.

As used in this NDA, “PROPRIETARY INFORMATION” means information that a Member or the Company does not routinely disclose to third parties except under conditions of confidentiality or other restrictions, and includes: (a) non-public business information, (b) non-public information about officers or employees, (c) information subject to legal privilege, (d) information protected by law, including the California Information Practices Act, or (e) technical information developed or controlled by a Member. Notwithstanding the foregoing, all cost and rate information disclosed by any Member respecting preparation of the Proposal or meeting DOE/NNSA Prime Contract obligations shall be deemed PROPRIETARY INFORMATION regardless of the presence or absence of marking.

2. Identification of PROPRIETARY INFORMATION

PROPRIETARY INFORMATION disclosed under this NDA shall be:

- i) If in tangible form, clearly identified at the time of disclosure as being PROPRIETARY INFORMATION by an appropriate and conspicuous marking;
- ii) If in intangible form (e.g., oral or visual,) identified as being PROPRIETARY INFORMATION at the time of disclosure, and confirmed as such in writing to the Receiving Entity within thirty (30) days after such disclosure;
- iii) If disclosed by electronic transmission (including, but not limited to, facsimile, electronic mail and the like) in either human readable or machine readable form, clearly identified at the time of disclosure as being PROPRIETARY INFORMATION by an appropriate and conspicuous electronic marking within the electronic transmission, such marking to be displayed in human readable form along with any display of the PROPRIETARY INFORMATION;
- iv) If delivered in the form of an electronic storage medium or memory device, clearly identified at the time of disclosure as being PROPRIETARY INFORMATION by an appropriate and conspicuous marking on the storage medium or memory device itself and by an appropriate and conspicuous electronic marking of the stored PROPRIETARY INFORMATION, such marking to be displayed in human readable form along with any display of the PROPRIETARY INFORMATION.

3. Scope of Disclosure
PROPRIETARY INFORMATION to be disclosed by the Members under this NDA relates to all information provided consequent to the Members' preparation of the Proposal and provision of services during the transition period and during performance of the DOE/NNSA Prime Contract.

4. Duty to Protect
 - A. With respect to the Disclosing Entity's PROPRIETARY INFORMATION, the Receiving Entity shall protect such PROPRIETARY INFORMATION from unauthorized use or unauthorized or accidental disclosure by the exercise of the same degree of care as it employs to protect its own information of a like nature, but not less than reasonable care. PROPRIETARY INFORMATION may not be disclosed to any third party without the express written consent of the Disclosing Entity. Copies or reproductions, in whole or in part, of PROPRIETARY INFORMATION or documents that incorporate PROPRIETARY INFORMATION must be marked by the Receiving Entity according to Paragraph 1.
 - B. This NDA is subject to all applicable laws and regulations of the Government of the United States of America. Each Member and the Company shall be responsible for obtaining any necessary import licenses, export licenses, or other governmental authorizations required in connection with any disclosure by it under this NDA. Receiving Entity shall be responsible for preventing disclosure of NOFORN information to foreign nationals located within a facility of the Receiving Entity hereto. Furnishing of information shall be subject to prior receipt of all necessary government approvals.

5. Use
PROPRIETARY INFORMATION disclosed under this NDA shall be used by a Receiving Entity solely for preparation of the Proposal and meeting its obligations under the Agreement and the DOE/NNSA Prime Contract. The Receiving Entity shall not use the PROPRIETARY INFORMATION for any other purpose.

6. Excluded Information
Information shall not be considered to be PROPRIETARY INFORMATION, and the Receiving Entity shall not be liable for the use and disclosure thereof, if such information (a) was in the public domain at the time of disclosure, or thereafter comes into the public domain through no act or omission of the Receiving Entity; or (b) is otherwise available to the Receiving Entity without restrictions on use and disclosure similar to those in this NDA, and no such restrictions should, to the best knowledge and belief of the Receiving Entity, apply.

However, PROPRIETARY INFORMATION shall not be deemed to be within one of the exceptions stated above merely because it is embraced by more general information within such exceptions. In addition, any combination of features disclosed by the Disclosing Entity will not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the Receiving Entity's

possession or otherwise available to it without restriction, unless the combination itself and its principle of operation fall within either of the foregoing exceptions.

This NDA will impose no restriction on the use or disclosure of information independently developed by employees of the Receiving Entity who had no access, directly or indirectly, to PROPRIETARY INFORMATION received hereunder.

When a Receiving Entity intends to use or disclose PROPRIETARY INFORMATION in reliance on any of the foregoing exceptions, it will so notify the Disclosing Entity in writing and identify the applicable exception at least 30 days prior to such intended use or disclosure.

7. Term

The Receiving Entity shall have a duty to protect the PROPRIETARY INFORMATION of the Disclosing Entity for a period of ten (10) years after receipt thereof, or until receipt of an explicit written release of PROPRIETARY INFORMATION by the Disclosing Entity, whichever first occurs. This Exhibit G shall survive the termination of the Agreement.

8. No Obligation to Make Disclosure

Except as otherwise stated in the Agreement, no Member has an obligation hereunder to disclose PROPRIETARY INFORMATION.

9. No License

Neither this NDA, the execution of the Agreement, nor the disclosure of any PROPRIETARY INFORMATION by a Disclosing Entity hereunder, shall be construed as granting to any other Member or the Company either a license (expressly, by implication, estoppel, or otherwise) under, or any right of ownership in, such PROPRIETARY INFORMATION or in any invention, patent or patent application, or copyright now or hereafter owned or controlled by the Disclosing Entity.

10. Return of Property

Upon termination of the Agreement, or at any time at a Disclosing Entity's request, the Receiving Entity agrees to deliver promptly to the Disclosing Entity all PROPRIETARY INFORMATION and all copies thereof which are in the Receiving Entity's possession or control and which belong to the Disclosing Entity.

11. Enforceability

The Members hereby acknowledge and agree that the covenants set forth in this Exhibit G are necessary for the protection of each Member's legitimate business interests; that irreparable injury will result to a Member disclosing PROPRIETARY INFORMATION if another Member receiving such PROPRIETARY INFORMATION breaches any of the terms of this Exhibit G; and that monetary damages may not be an adequate remedy for such a breach or threatened breach or anticipated breach of this Exhibit G. The Members agree that, in addition to all other remedies available at law or in equity, a Member disclosing PROPRIETARY INFORMATION to another Member shall be entitled to

specific performance of this Exhibit G or injunctive relief to enjoin any actual, continued, or threatened breach of this Exhibit G, without the necessity of posting bond therefor.

EXHIBIT H

UNSHARED UNALLOWABLE COSTS

Costs that are not reimbursable by DOE/NNSA under the Prime Contract, and which are incurred by a Member or by the Company for the exclusive benefit of a Member ("Unshared Unallowable Costs"), shall not be considered to be expenses of the Company and will be borne by the Member exclusively benefiting from such cost, unless otherwise approved as a Planned Unallowable Cost pursuant to Section 8.1. To the extent paid by the Company, the amount of such costs will be deducted from the distributions otherwise payable to the benefiting Member, or will be paid by the Member to the Company for the purpose of reimbursing such costs. Such costs shall be identified as Unshared Unallowable Costs and may include:

1. Compensation for personnel assigned to the Company by a Member that is not reimbursed under the Prime Contract, including bonus compensation, special executive compensation and compensation over the limit set forth in the Prime Contract;
2. Indirect home office cost allocation of the Members, including overhead and G&A except with respect to those indirect cost allocations related to the parent organization oversight plan required by the Prime Contract and approved by the Executive Committee.
3. Unallowable relocation expenses for employees of a Member transferred to the Company;
4. Penalties for removal by a Member of a Key Person nominated by that Member.
5. Costs associated with attendance of the Governors on the Executive Committee at meetings of the Board of Governors.
6. Costs associated with Member litigation against the Company or another Member or its Affiliate or derivative suits brought against a Member or its parent on behalf of that entity's shareholders.