UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF SCIENCE, BROOKHAVEN SITE OFFICE

Ground Lease Agreement
(Contract No.: )

for the

TBD

BY and BETWEEN:

THE UNITED STATES
DEPARTMENT OF ENERGY, LESSOR

and

TBD, LESSEE

______________, 2019
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UNITED STATES DEPARTMENT OF ENERGY

GROUND LEASE AGREEMENT

THIS GROUND LEASE (“Ground Lease” or “Lease”), made and entered into this _____ day of __________, 20__ by and between the UNITED STATES OF AMERICA, acting by and through the United States Department of Energy (“Lessor”), an under the authority of Section 161g of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and TBD _____________________________ (“Lessee”), a (insert LLC, Corp, etc.) with an office and place of business at _______________________.

WITNESSETH:

WHEREAS, Lessor is the fee owner of that certain real property consisting of approximately _____ acres (“Premises”), improved and unimproved property located in the County of Suffolk, State of New York, commonly identified as Brookhaven National Laboratory (“BNL”), and more particularly, that unimproved portion of BNL described in Exhibit “A” attached hereto and incorporated herein by this reference; and

WHEREAS, BNL is listed on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended; and

WHEREAS, the Brookhaven Science Associates, LLC is the current Managing and Operating Contractor of BNL for Lessor, under Contract No. DE-SC0012704, (“M&O Contractor”); and

WHEREAS, Lessee is a _______________ (Corporation, LLC, Partnership – Certificate of Good Standing, Resolution etc. to support authority); and

WHEREAS, Lessor has determined that the Premises is not excess property, is not at this time needed for other public use, a lease of the Premises for certain uses compatible with the mission and operations of BNL is in the public interest, and such compatible uses include appropriate lodging accommodations for Laboratory visitors, guests and users; and

WHEREAS, Lessor desires to lease the Premises to Lessee, and Lessee desires to lease the Premises from Lessor, in order for Lessee to develop, construct, operate and maintain a new facility, a ________________ building(s) with approximately
___________ gross square feet, to be known as the _____________ and related improvements (“Facility”); and

WHEREAS, Lessor has found that granting this Ground Lease on the terms and conditions hereinafter stated is consistent with its mission and with the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the receipt and sufficiency of which is hereby acknowledged, the parties agree that the foregoing recitals are true and correct and incorporated herein by this reference, and further agree as follows:

1. DEFINITIONS

The terms referenced above and hereinafter shall have the meanings ascribed to them below:

(a) “BNL” shall mean the Brookhaven National Laboratory site located in Upton, New York, owned by Lessor and managed and operated by the M&O Contractor.
(b) “DOE” means the United States Department of Energy.
(c) “Event of Default” shall mean a failure to perform a term or condition of this Ground Lease, as further described in Article 21, TERMINATION BY LESSOR.
(d) “Facility” shall mean the ___________, a ______________, constructed on the Premises, as well as any Improvements to the Facility or Premises, either initially with construction of the Facility or subsequently.
(e) “Ground Lease” or “Lease” shall mean Lessor, for and in consideration of the rents, covenants and conditions herein set forth, does hereby lease to Lessee, and Lessee does hereby lease from Lessor, the Premises, subject to the terms, conditions and provisions hereof, and as supplemented and amended from time to time.
(f) “Improvements” shall mean any improvements made to the Facility or the Premises by Lessee under this Ground Lease, either initially with the construction of the Facility or subsequently.
(g) Jurisdiction shall mean _______________________________
(h) “Lessee” shall mean the ___________
(i) “Lessor” shall mean the United States of America acting by and through the United States Department of Energy.
(j) “M&O Contractor” shall mean the Brookhaven Science Associates, LLC, the current managing and operating contractor of BNL under Contract No. DE-SC0002704 with Lessor, or any successor to either the M&O Contractor or DOE or both.
(k) “NEPA” shall mean the National Environmental Policy Act of 1969, as amended.
(l) Non-Qualifying Party shall mean a party that is (i) on the most current “List of Parties Excluded from Federal Procurement and Nonprocurement

(m) “Parties” shall mean the Lessor and the Lessee.

(n) “Premises” shall mean the tract of land described in Exhibit A – LEGAL DESCRIPTION, attached hereto.

(o) Quiet Enjoyment shall mean Lessor covenants and agrees that Lessee, upon paying the rent and other charges herein provided and observing and keeping the covenants, conditions, and terms of this Lease on Lessee’s part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Premises during the “Term” and any “Extended Term” (which terms are hereinafter defined) of this Lease without hindrance of Lessor, or any person claiming under Lessor. Notwithstanding the foregoing, Lessor hereby retains the right to enter upon and inspect the Premises and Facility(ies) at reasonable times and upon reasonable notice, and each lease with the tenant occupants of the Facility(ies) shall contain a provision as to this reserved right. Lessor bly determined by Lessor.

(p) “Term” shall mean the length of time this Ground Lease shall be in effect, beginning on the date of execution of the Ground Lease by Lessor and Lessee and concluding ________ years after the date of execution, unless this Ground Lease is terminated at an earlier time pursuant to Article 25, TERMINATION BY LESSOR.

(q) “Taxable Parcel” shall mean if applicable, Lessee shall undertake all reasonable actions necessary to identify the Premises as a separate taxable parcel, in compliance with applicable state and local laws.

(r) “Upton Square” shall mean that portion of BNL ________

(s) “Utility Easements” shall mean agreements with utility companies creating easements in favor of such companies as are required in order to service the Facility(ies) to be constructed on the Premises.

2. THE PREMISES

The Premises is the land described in Exhibit A - LEGAL DESCRIPTION OF PREMISES attached hereto and made a part hereof. Consistent with Paragraph (A) of Section 11, RIGHT OF ENTRY AND SECURITY REQUIREMENTS, ingress to and egress from and the use of the land described in Exhibit A – LEGAL DESCRIPTION OF PREMISES are hereby granted to Lessee for the term of this Ground Lease. The occupancy, use, and Quiet Enjoyment of the Premises by Lessee are hereby granted to Lessee for the term of this Ground Lease and are governed by the covenants and conditions contained herein.
3. TERM OF GROUND LEASE

This Ground Lease shall commence and be in full force and effect beginning on the date of the last signature of either the Lessor or Lessee to the Ground Lease ("Lease Commencement Date"). Prior to the Lease Commencement Date, Lessee shall not have any possessory, legal or equitable right, title or interest in or to the Premises. The term of this Lease shall be for a period of ________ years commencing on the Lease Commencement Date. Lessee shall notify in writing to the Lessor the Certificate of Occupancy issued for the facility.

4. RENTAL CONSIDERATION

Lessee agrees to pay Lessor, for the use and occupancy of the Premises ("Rent"), payment shall be payable to the United States Treasury, in the amount of ___________________ and 00/100 Dollars ($_______), payable in monthly installments in advance on or before the first day of each calendar month for that calendar year as noted below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Amount</th>
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<tr>
<td>Year 1 – TBD</td>
<td>TBD</td>
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<tr>
<td>TBD – TBD</td>
<td>TBD</td>
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The annual fixed rent shall be based on the fair market rent value of the Premises as unimproved land as determined by Lessor as indicated by an appraisal.

5. ESTATE AND AUTHORITY OF LESSOR

Lessor, acting under the authority of Section 161g of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201g), has determined that the Premises hereby leased were acquired to carry out Atomic Energy Act purposes. Furthermore, the Premises is not excess property and the leasing thereof will be advantageous to the United States of America and in the public interest.

Lessor represents that:

(A) The execution and delivery of this Ground Lease by Lessor have been authorized by all necessary action on the part of Lessor;

(B) This Ground Lease constitutes a legal, valid, and binding obligation of Lessor enforceable in accordance with its terms;

The United States of America has fee simple title to the Premises;

(C) There are no liens or encumbrances on the Premises;

(D) To Lessor’s best knowledge, the Premises is not in violation of any law, rule, regulation or code applicable to the property, except as noted below;
(E) That BNL is listed on the National Priorities List in accordance with the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9620(h) ("CERCLA"); however, the Premises is not known to require any further environmental restoration; and

(F) Lessor has cognizance and control of the Premises.

6. OPERATIONS

(A) The Facility shall successfully complete and operate without undue disruption that may negatively impact the operations to the Lessor or its BNL site operations.

(B) Lessee shall comply with all applicable laws and requirements, including, but not limited to, all environment, safety, and health and security laws and regulations applicable to the Premises.

7. COMMUNICATION AND PUBLIC AFFAIRS

Lessor and Lessee agree that each has an obligation and commitment to openness in public information and involvement. Consistent with these principles, Lessor and Lessee will exercise diligent efforts to inform each other, in advance, of significant public affairs events or other major activities that might reasonably affect the other. When such advance exchange is not possible, each party shall promptly furnish the released information to the other party concurrent with its release. Such notices shall be provided to the representatives of the Lessee and Lessor identified in Article 30, NOTICES.

8. CONDITION OF THE PREMISES (Reserved)

9. USE OF THE PREMISES

(A) The Lessee shall construct, operate and use the Premises and Facility and any subsequent improvements, for purposes consistent with the operation of a __________ and in a manner which does not interfere with the mission of BNL and/or create a security risk to the United States of America’s interests or operations of BNL.

(B) Lessee agrees that it shall not make any material alterations or additions not required in the ordinary course of its management and operation of the Facility without Lessor’s written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(C) If it is or becomes unlawful for Lessee, or anyone holding under Lessee directly or indirectly, to maintain a ________________ building on the
Premises, or such use is declared unlawful, then Lessee shall have the right to terminate this Lease by giving Lessor within sixty (60) days of such occurrence, thirty (30) days written notice of such termination. In such event, rent, taxes and all other expenses directly related to the Premises will be prorated as of the date of termination. Lessee's failure to timely notify Lessor of such termination shall be deemed a waiver of such termination in which event the Lease shall continue, provided that any change in use of the Premises is approved by Lessor, which approval may be withheld in its sole discretion. Because Lessor is, fee simple owner of the Premises, Lessor shall be deemed to be reasonably exercising its sole discretion if any such proposed change in use conflicts with, is detrimental in value to, or restricts in any way Lessor's use, enjoyment or ownership and improvements now or hereafter to be constructed thereon.

(D) Use of _______________ Building. Lessee shall use or cause the use of the Premises for the operation of the _______________ and such related and incidental uses thereto as permitted hereunder and for no other uses.

10. EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY

This Ground Lease is subject to any outstanding easements and rights of way over, across, in, and upon the Premises, or any portion thereof, and to the right of Lessor to grant such additional easements and rights of way over, across, in, and upon the Premises as Lessor shall determine to be in the public interest and which shall not materially interfere with Lessee’s rights hereunder. Lessor shall notify Lessee in writing of any easement activities that could potentially impact Lessee's operations. Existing easements, if any, are attached as Exhibit I - EASEMENTS.

11. RIGHT OF ENTRY AND SECURITY REQUIREMENTS

(A) Lessee and its employees, agents, contractors, invitees, tenants, and assigns shall have a non-exclusive right to access Upton Square subject to any applicable security and access requirements and standards, in order to have ingress to and egress from the Premises as may be necessary from time to time for construction, maintenance, operation, use, and repair to the Facility or subsequent improvements to the Facility. Lessee's use of Upton Square, including the Premises and the Facility and improvements, shall be subject to such rules and regulations and limitations regarding safety and security as Lessor may prescribe from time to time or as may be applicable by operation of state and federal law. Lessor reserves the right to deny access to anyone who does not abide by such rules and regulations.

(B) Lessor reserves unto itself, its contractors, employees, and assigns the right (i) to use, maintain, repair, remove, and replace existing roads, railroads, water lines, power lines, natural gas lines, and other facilities that may touch or intersect the Premises; (ii) to construct, use, maintain, repair, remove, and replace roads, railroads, water lines (to include potable, sanitary and storm), canals, power lines, natural gas lines, communications and data lines, materials,
and equipment not owned, leased, or provided by Lessee, and other facilities over, under, across, and upon the Premises; (iii) to place, use, maintain, repair, remove, and replace monitoring equipment such as, but not limited to, fire control and fire alarm facilities, over, under, across, and upon the Premises. Lessor’s exercise of its right under this Paragraph (B) of this Article shall not unreasonably interfere with or endanger Lessee’s use and quiet enjoyment of the Premises.

(C) Lessor, after consultation with the M&O Contractor and Lessee, shall provide Lessee with a list of requirements to be undertaken which, in the Lessor’s sole discretion, are necessary to maintain the overall security of Upton Square and BNL. All such requirements shall be implemented at the Lessee’s sole expense.

12. JURISDICTION (RESERVED)

13. UTILITIES EASEMENTS RESERVED

14. SERVICES

(A) The Parties shall enter into a Memorandum of Agreement (“MOA”) and negotiate the extent to which the Lessor, through the M&O Contractor, will make available fire, hazardous material, emergency response, and other common infrastructure support services. Lessee shall receive any such services in accordance with the then current procedures and priorities applicable to the BNL site, including any support arrangements for mutual aid from surrounding communities. Any costs associated with such services shall be at a full cost recovery rate or charge as negotiated between the Lessor and Lessee. Notwithstanding any other provision of this Lease, Lessor shall not be liable for any actions or failure to act under this Article.

(B) Neither the Lessor nor the M&O Contractor will provide police, security or protective services to Lessee, the Premises or the Facility.

(C) Lessee shall be responsible for providing all building maintenance, repair, and/or custodial services to its Facility which are necessary to keep the Facility in good, safe, sanitary, and tenantable condition. Lessor maintains a right to inspect the Facility to ensure compliance with this provision. Failure of the Lessee to keep the Facility in good, safe, sanitary, and tenantable condition can be grounds for termination of this Ground Lease.

15. CONSTRUCTION, RECONSTRUCTION AND REMOVALS

(A) Lessee shall comply with the development obligations set forth on Exhibit “____” in connection with the Facility(ies) and related improvements and shall cause commencement of the construction of the Facility(ies) on the Premises, together with all required landscaping and parking, conforming in all respects
with local building code requirements, zoning requirements and this Lease on or before ________________ (the “Construction Commencement Date”). Lessee shall further comply with its obligations for completion of the building shell of the Facility in a timely manner by the date that is ______ months following the Construction Commencement Date (the "Completion Date"), subject to any unavoidable delays in construction of the building shell of the Facility or related improvements resulting from (i) the required coordination or simultaneous construction of building systems for the project or (ii) on-site or off-site improvements required in connection with approvals or permits issued for the Facility.

(B) Before any construction, as described in Section 14(A) above is commenced on the Premises, and before any building materials have been delivered to the Premises by Lessee or under Lessee’s authority, Lessee shall cause compliance with all of the conditions to commencement of construction as set forth in the Exhibit “____”.

(C) Lessee shall also deliver to Lessor true copies of the documents to evidence the commitments of financing for the new construction, as a condition to commencement of any construction on the Premises.

(D) Lessee shall deliver to Lessor, at Lessee’s expense, evidence of compliance with all then applicable regulations, requirements for permits and codes, ordinances, approvals, including but not restricted to grading permits, payment of all permit fees and other construction fees and escrows, if any, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction, and as otherwise required by this Lease.

(E) In addition to the Facility to be built and operated by the Lessee, the Lessee may elect to make additional improvements over the course of the term of this Ground Lease which do not interfere with the mission of BNL and/or create a security risk to the United States of America’s interests or operations at BNL. If any additional improvements are made during the term of the Lease, the Lessee will adhere to all Government regulations, subject to the advance written approval of the Lessor which shall not be unreasonably withheld, conditioned or delayed.

(F) Lessee shall provide drawings to Lessor for the Facility and any subsequent improvements. At the end of construction of the Facility or any subsequent improvements, Lessee shall provide as-built drawings to Lessor within ______ (___) days of completion.

(G) Legal title to the Facility and any subsequent improvements shall be and remain in Lessee during the continuance of this Ground Lease.
(G) Notwithstanding any other provision of this Ground Lease, Lessee shall be obligated to repair or reconstruct the Facility and any improvements to their then current state at no cost to the Lessor if the Facility and improvements are damaged or destroyed by fire or any other occurrence for which insurance coverage is generally available, provided, however, that said damage or destruction occurs while the Facility and improvements are being constructed or are in operation. Subject to the preceding provision, the term of the Ground Lease may be extended, at Lessor’s election, for that period of time as determined by the Lessee necessary to repair major damage to or reconstruction of the Facility and Improvements. The failure of the Lessee to repair or reconstruct the Facility and any improvements within a reasonable time period can be grounds for termination of this Ground Lease.

(H) Lessee shall obtain all written performance bonds and/or completion guaranties, in favor of Lessor, in compliance with the requirements of Exhibit _____.

(I) The Lessee shall not conduct, nor permit its Sublessee(s), to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without prior written approval by Lessor.

16. MECHANICS’ LIENS

(A) Lessee shall not suffer, create or permit any mechanic's liens or other liens to be filed against the fee of the Premises nor against Lessee's leasehold interest, nor any buildings or improvements on the Premises, by reason of any work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Premises or any part thereof through or under Lessee. Pursuant to applicable law, Lessor's interest as herein described shall not be subject to liens for improvements made by Lessee or any sublessee.

(B) If any such mechanic's or laborer's liens or materialman's lien shall be recorded against the Premises, or any improvements thereof, within sixty (60) days after notice of the filing thereof, or fifteen (15) days after Lessee is served with a complaint to foreclose said lien or Lessor advises Lessee in writing that Lessor has been served with such a complaint, whichever is earlier, Lessee shall cause such lien to be removed, or will transfer the lien to bond pursuant to applicable law. If Lessee in good faith desires to contest the lien, Lessee shall be privileged to do so, but in such case Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages, including attorneys’ fees and costs, occasioned thereby and shall, in the event of a judgment of foreclosure upon any mechanic's lien, cause the same to be discharged and removed prior to the execution of such judgment. Lessor may, in its sole discretion, require that the lien be transferred to bond as a condition precedent to Lessee's privilege to contest any lien.
17. PERMITS AND LICENSES

(A) Lessee shall be responsible for obtaining and complying with all applicable permits, licenses, certifications, authorizations, and approvals from federal, state, and local regulatory agencies which are necessary for the design, construction, and initial occupancy during the term of this Ground Lease. At the request of Lessor, Lessee shall produce any permits as evidence of compliance with this provision. Lessor retains the right to inspect Lessee’s operations for compliance with all applicable permits, licenses, and regulations. Lessee shall take appropriate corrective action within agreed upon times on any deficiencies noted by Lessor resulting from such inspection. Lessee shall provide Lessor with assurances that all applicable environmental requirements have been complied with along with any information required for environmental reporting by Lessor and/or its M&O Contractor in a timely manner.

(B) Lessee shall be responsible for managing and disposal of all wastes it generates at the Facility, the Improvements, and on the Premises. The responsibility for the proper management and disposal of hazardous material and hazardous wastes, rests with the Lessee.

(C) Lessor shall sign as land owner all permit applications, permits, licenses, certifications, authorizations, approvals, or other required submittals to regulatory agencies for which an owner’s signature is mandated by law or regulation. Lessee shall submit to Lessor for review and comment in draft form all permit applications, permits, and other regulatory submittals which are required to be signed by Lessor as land owner. Such draft submittals shall be provided to Lessor within a time-frame sufficient to allow Lessor’s substantive review and comment, but in no event less than thirty (30) days prior to the date they are due to the regulatory agency. Lessee shall accompany the document to be submitted to the regulatory agency with a certification statement, signed by the appropriate corporate officer, attesting to Lessor that the information Lessor is being requested to sign has been prepared in accordance with all applicable requirements.

(D) Lessee’s activities on the Premises must be in accord with those actions analyzed by the Lessor pursuant to the National Environmental Policy Act (NEPA) and DOE’s NEPA regulations at 10 CFR 1021 and DOE’s floodplain/wetland regulations at 10 CFR 1022. Lessee shall not initiate any construction or take any other irreversible actions until Lessor issues a NEPA clearance. If changes are anticipated to the scope of activities as described in the applicable NEPA documents and determinations, or if the scope of activities is desired to be expanded to encompass other actions, Lessee has a continuing notification obligation, and shall notify Lessor (through the Lessor’s Brookhaven Site Office), of any proposed changes. Requirements for additional NEPA documents or determinations shall be determined by the Lessor on a case-by-
case basis. Lessee shall provide information as requested to support any future NEPA determinations.

(E) Lessee shall accept all responsibility for notices of violations or alleged violations and fines, penalties, and settlements agreed to and/or issued by federal, state, or local regulators to the Lessee, the M&O Contractor, and/or the Lessor resulting from the actions of Lessee, its agents, representatives, or invitees for acts or failures to act after the effective date of this Ground Lease.

18. FEDERAL, STATE AND LOCAL TAXES

Lessee shall pay or cause to be paid, without abatement, deduction, or offset, the following items: All real and personal property taxes, general and special assessments, and all other charges, assessments and taxes of every description, levied on or assessed against the Facility(ies) and other improvements located on the Premises or personal property located on or in the Premises, the Facility(ies) or improvements, to the fullest extent of installments assessed during the Term from and after the Commencement Date of this Lease. Lessor makes no representation regarding the applicability or non-applicability of any Federal, State of local tax.

19. LIABILITY AND INSURANCE

19.01 Government’s Limitation of Liability and General Indemnification by Lessee. The Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident attributable or incident to its possession and use of the Premises or the activities conducted under this Lease. The Lessee expressly waives all claims against the Government for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such possession and use of the Premises by the Lessee, or the conduct of activities or the performance of responsibilities under this Lease by the Lessee. The Lessee further agrees to indemnify and hold harmless the Government, its officers, agents, and employees and contractors from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and use of the Premises by the Lessee. The Government will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable. The Lessee’s obligation under this Paragraph 19.01 shall survive the expiration or termination of this Lease. The Lessee’s obligation hereunder shall apply whenever the Government incurs costs or liabilities for the Lessee’s actions giving rise to liability under this Section 19. Except as otherwise provided in this Lease, the Lessee’s obligations under this Paragraph 19.01 shall apply to all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession and/or use of the

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Premises by the Lessee, the Lessee’s officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Premises for the purpose of performing official duties) who may be on the Premises at their invitation or the invitation of any one of them (the “Lessee Parties”), or the activities conducted by or on behalf of the Lessee Parties under this Lease.

19.02. Liability for Actions of Lessee Parties. Except as otherwise provided in this Lease, the Lessee’s obligations under Paragraph 19.01 shall apply to all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession or use of the Premises by the Lessee, the Lessee’s officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Premises for the purpose of performing official duties) who may be on the Premises at their invitation or the invitation of any one of them (the “Lessee Parties”), or the activities conducted by or on behalf of the Lessee Parties under this Lease.

19.03. Insurance. The Lessee shall in any event and without prejudice to any other rights of the Government bear all risk of loss or damage or destruction to the Premises, and any building(s), improvements, fixtures, or other property thereon, arising from any causes whatsoever, with or without fault by the Government, provided, however, the Government shall not be relieved of responsibility for loss or damage that is solely the result of the gross negligence or willful misconduct of the Government to the extent such loss or damage is not covered by coverage of insurance required under this Lease.

19.04(a). Commercial Property Insurance. The Lessee, at its sole cost and expense, shall throughout the entire Term procure and maintain commercial property insurance upon the Lessee’s improvements and personal property with coverage for perils set forth under the Causes of Loss-Special Form, which shall, at a minimum, cover the types of perils insured under the ISO Special Causes of Loss Form - ISO CP 10 30 (Special Causes of Loss Form — Insurance Services Office, Inc. (ISO), commercial property insurance causes of loss forms. Causes of loss forms establish and define the causes of loss (or perils) for which coverage is provided. The special causes of loss form (CP 10 30) provides what is referred to as all risks coverage: coverage for loss from any cause except those that are specifically excluded) with coverage extended for the perils of flood and earthquake, in an amount equal to the full estimated replacement cost. Such insurance shall contain an agreed upon valuation provision in lieu of coinsurance clause, an ordnance and law endorsement, debris removal coverage, and a waiver of subrogation endorsement in favor of the Government.

19.04(b). Commercial General Liability Insurance. The Lessee, at its sole cost and expense, shall throughout the entire Term, procure and maintain Commercial General Liability insurance, on an occurrence basis, insuring against claims for bodily injury, death and property damage, occurring upon, in or about the
Premises, including any building or structure thereon and adjoining sidewalks, streets, and passageways. Such insurance must be effective at all times throughout the Term, with limits of not less than $________________ per occurrence, and not less than $______________ aggregate and excess umbrella liability coverage of $________________, which shall include coverage for fire, legal liability, and medical payments, and naming the Government as an additional insured and shall have standing with the insurer for the purpose of submitting claims directly with the insurer. This coverage may be provided under primary liability and umbrella excess liability policies, and shall include:

(i) business auto liability insurance that insures against claims for bodily injury and property damage arising from the use of “any auto” (including owned, hired and non-owned vehicles) with a coverage of at least $______________ per occurrence for death or bodily injury, $______________ per person, and $______________ per occurrence for property damage or loss;

(ii) workers’ compensation or similar insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Government or the Lessee, in form and amounts required by law (statutory limits), and employers’ liability, with limits of $1,000,000 each coverage and policy limit;

(iii) commercial environmental or pollution legal liability insurance, including coverage for mold when available, with limits adequate to protect the Lessee if such exposure exists; and

(iv) commercial underground/above ground storage tank liability insurance, with limits adequate to protect the Lessee, if such exposure exists.

All liability policies shall be primary and non-contributory to any insurance maintained by the Government. The insurance carried and maintained by the Lessee pursuant to this Paragraph 19.04(b) shall provide coverage to protect the Government from any damage and liability for which the Lessee is liable or responsible or agrees to hold harmless and indemnify the Government under this Lease. Proceeds under all policies of insurance carried and maintained to provide the coverage required by this Paragraph 19.04(b) shall be available only for that purpose. If the above insurance is written on a claims-made form, it shall continue for three (3) years following the expiration or earlier termination of this Lease.

19.04(c). Builder’s Risk Insurance. Upon the commencement of construction of any Lessee improvements, Lessee (or its contractor) shall procure and maintain, until completion of such improvements, builder’s risk insurance, and upon completion of the improvements, Lessee shall procure and maintain at Lessee’s cost a standard fire and extended coverage insurance policy or policies on the Premises in an amount no less than the full replacement cost of the improvements. Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of Lessee, but subject to any prior rights of any Mortgagee to collect such insurance proceeds and apply them to the repayment of any outstanding mortgage loan, shall be
payable to Lessee to be used for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to Lessee, or to a Mortgagee of Lessee’s leasehold interest in the Lease, as designated in writing by Lessee. Lessee may require any sublessees or licensees, as joint and several responsible parties with Lessee for those portions of the Premises under their control, to maintain and carry at their expense portions of the insurance required hereby and Lessee shall not be required to carry insurance on such portion of the Premises insured by any sublessees or licensees, provided that the insurance carried by Lessee and any sublessee or licensee is collectively sufficient to insure all of the improvements on the Premises.

19.04(d). Increase in Insurance.
(i) The amounts of Commercial General Liability insurance coverage required by Paragraph 19.04(b) are subject to review at the end of each three-year period following the Beginning Date. At each review, the amounts of coverage shall be increased to the amounts of coverage that institutional lenders generally require to be carried by prudent lessees of comparable buildings/facilities in the area in the vicinity of the Installation.
(ii) The Government may review and request appropriate increases based upon this review within sixty (60) days after each three-year period ends.

19.04(e). Insurance Criteria.
(i) Insurance policies required by this Lease shall be issued by insurance companies licensed to do business in the state of New York with general policyholder’s ratings of at least A and a financial rating of at least XI in the most current Best’s Insurance Reports available on the date the Party obtains or renews the insurance policies. If the Best’s ratings are changed or discontinued, the Parties shall agree to an equivalent method of rating insurance companies.
(ii) Each policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the Government or any other person, and will provide that the insurer will have no right of subrogation against the Government.
(iii) Under no circumstances will the Lessee be entitled to assign to any third party rights of action that it may have against the Government arising out of this Lease.
(iv) Each policy shall provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Government of written notice thereof by the Lessee and provide that the insurer shall have no right of subrogation against the Government.
(v) If any aggregate limit is reduced because of losses paid to below 75% of the limit required under this Section 19, Lessee shall notify the Government within ten (10) days after the date such reduction occurs.
(vi) No policy shall contain a deductible or self-insured retention in excess of $10,000 without the Government’s prior written approval.
(vii) Each policy and any required endorsements shall be reasonably satisfactory to the Government in all other respects.
(viii) The Lessee understands and agrees that cancellation of any insurance coverage required to be procured and maintained by the Lessee under this Paragraph 19.04 will constitute a failure to comply with the terms of this Lease, and the Government shall have the right to terminate this Lease for any default and breach pursuant to Paragraph ______________ upon receipt of any such cancellation notice, but only if the Lessee fails to cure such noncompliance to the extent allowed under Paragraph ______________.

19.04(f). Evidence of Insurance. On or before the Beginning Date, the Lessee shall deliver an ACORD Form 25-S certificate of insurance for all commercial general liability, worker’s compensation and employer’s liability policies required under this Lease. Lessee shall deliver ACORD Form 27 for all required property insurance. Lessee shall deliver new certificates at least thirty (30) days before the expiration date of current policies. Copies of endorsements required under this Section 19 shall be attached to certificates delivered to the Government. If requested by the Government, Lessee shall deliver a certified copy of any insurance policy required under this Section 19. If the forms of policies, endorsements, certifications or other evidence of insurance required under this Section 19 are superseded or no longer available, the Government shall have the right to require other equivalent forms.

20. DAMAGE AND DESTRUCTION

(A) At any time during the Term or Extended Term(s) of this Lease, and so long as no Event of Default has occurred, if any buildings or improvements now or hereafter on the Premises are damaged and/or destroyed in whole or in part by fire, theft, the elements, or any other cause, this Lease shall continue in full force and effect, and Lessee, at its sole cost and expense, shall repair and restore the damaged or destroyed Facility(ies) and related improvements according to the original plan hereof or according to such modified plans as shall be reasonably approved in writing by Lessor, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses. The work of repair and restoration shall be commenced by Lessee as soon as possible but in no event later than ninety (90) days after the damage or destruction occurs and shall be completed with due diligence not longer than six months after the work is commenced, unless otherwise agreed to in writing by Lessor. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Premises set forth in Article 14, CONSTRUCTION, RECONSTRUCTION, AND REMOVALS of this Lease.

(B) Notwithstanding Article 19 (A) above, in the event that during the last nine (9) months of the Term or any Extended Term the Facility(ies) located on the Premises is damaged or destroyed by fire, theft or any other casually, through no fault of Lessee, so that it cannot be repaired and restored as required by
Article 15, CONSTRUCTION, RECONSTRUCTION, AND REMOVALS, of this Lease at a cost not more than thirty-five percent (35%) of the cost of replacing the Facility(ies), then Lessee and Lessor shall each have the option of terminating this Lease on the last calendar day of any month during the last year of the Lease Term or any Extended Term by giving to Lessor or Lessee, as the case may be, at least sixty (60) days prior written notice of Lessee's or Lessor's intent to do so; and if Lessee elects to terminate this Lease, then Lessee shall also be required to remove, at Lessee's own cost and expense, all debris and remains of the damaged improvements from the Premises. In the event, however, that Lessee has duly exercised a renewal option in accordance with the conditions of this Lease; Lessee has commenced to repair and restore in a timely manner the Facility(ies) and any other damaged improvements in accordance with the terms of this Lease; Lessee has demonstrated to the reasonable satisfaction of Lessor sufficient funds and insurance proceeds to complete the work; and no Event of Default has occurred which remains uncured, Lessor agrees not to terminate this Lease. Any failure by Lessee to timely and properly repair and restore the Facility(ies) and Premises, once Lessee has elected to do so, shall constitute an Event of Default hereunder.

21. LIABILITY AND INDEMNITY

(A) Lessee agrees to indemnify, reimburse, defend and hold Lessor, the M&O Contractor, and their officers, employees, agents, contractors at whatever tier, and authorized representatives harmless for, and against all costs and expenses related to claims, damages, injunctions, orders, judgments, penalties, and reasonable attorneys’ fees asserted against or incurred by Lessor which are attributable to or arising out of the Lessee's, sublessee(s)’, or tenant’s acts, omissions, operation, occupation, or use of the leased Premises and/or Facilities, but only to the extent that such damage, injury or death is not caused by the gross negligence or willful misconduct on the part of Lessor, its officers, employees, agents, and its contractors. Lessee agrees to further indemnify Lessor with respect to any “release” as defined in Section 101(22) of CERCLA of any hazardous substance as defined in Section 101(14) of CERCLA or petroleum (including crude oil) onto or from the Premises at any time while this Ground Lease is in effect which is generated by the Lessee, its sublessee(s), and/or tenants; for failure of Lessee, sublessee(s), and/or tenants to comply with applicable environmental laws; and for transportation, deposit, storage, or disposal by the Lessee or sublessee(s) of hazardous substances or petroleum on the Premises. The terms of this provision shall survive the expiration or early termination of this Ground Lease.

(B) With respect to the Premises, any liability, obligation, loss, damage or claim, action, suit, civil fine or penalty, or expense or disbursement, which may be incurred or imposed, or asserted by any party, and arising out of any condition, act, or failure to act, including all preexisting environmental contamination, which occurred prior to the Commencement Date of this Ground Lease.
Lease, Lessee shall have no liability with respect to any said preexisting condition, including environmental remediation costs. Provided, however, to the extent that the acts or failure to act on the part of Lessee, its officers, employees, agents, authorized representatives, or invitees, on or after the effective date of this Ground Lease, causes or adds to any liability, loss, expense, fine, penalty, or remediation costs resulting from a condition in existence upon the effective date of this Ground Lease, Lessee shall be responsible for that portion of the fine, penalty, or remediation costs reasonably attributable to Lessee’s act or failure to act.

(C) Lessor shall not be responsible for damages to the property or injuries to the persons of Lessee, its officers, employees, agents, contractors, authorized representatives, users, guests, invitees, tenants, or others who may be on the Premises at Lessee’s invitation, arising from activities of Lessee and Lessee shall hold Lessor harmless from any and all such claims, except as provided for in Paragraph (A) of this Article.

(D) Lessor shall not be liable to the Lessee for any indirect, consequential, or incidental damages flowing from any breach or alleged breach of its obligations under this Ground Lease.

(E) Nothing herein prohibits Lessor from raising any legal defenses available to it due to its status as a Federal agency in any action brought in relation to a claim for damages.

22. MAINTENANCE OF PREMISES

(A) Lessee agrees that it will, at its own cost and expense, maintain or cause to be maintained the Premises, ______________ (building) and any other improvements thereon and appurtenances thereto and every part thereof, in good order, condition and repair and in accordance with all applicable laws, rules, ordinances, orders and regulations of all governmental authorities. In the event any repairs required to be made under the provisions of this Lease are not made within thirty (30) days after written notice from Lessor to do so, then Lessor may, at its option, enter upon said Premises and repair the same, and the cost and expense of such repairs, with interest at the maximum rate then allowed by law, shall be due and paid by Lessee as additional rent to Lessor upon demand.

(B) Lessee, at its sole expense, shall maintain or cause to be maintained during the Term of this Lease the parking areas constructed on the Premises, and all landscaping therein. These parking areas and all included landscaping will be maintained and repaired in accordance with the repair and maintenance covenants of Lessee under this Lease.
23. TRANSFERS ASSIGNMENTS

23.01. Transfer and Assignment. The Lessee shall neither transfer nor assign all or part of its interest in this Lease without the Government’s advance written consent. The Government’s consent to any transfer or assignment shall not be unreasonably withheld, conditioned, or unduly delayed. This Paragraph 23.01 does not require the Government’s approval of a change in ownership of the Lessee as a result of a stock (or limited liability company interest) purchase with no legal change in the leasing party, when Lessee in its new form remains in control of the assets and is the party performing the lease obligations. In such cases, the Lessee shall immediately notify the Government of such change of ownership.

23.01(a). Procedure. The Lessee must provide to the Government in writing: (i) the name and address of the proposed transferee or assignee; (ii) the terms of the proposed transfer or assignment; and (iii) financial information sufficient for the Government to reasonably evaluate the proposed transferee or assignee. The Government shall, within sixty (60) days after receiving the information under this Paragraph 23.01, give notice to the Lessee to permit or deny the proposed transfer or assignment.

23.01(b). Voided Transfer or Assignment. Any attempted assignment or transfer in violation of this Paragraph 23.01 shall be void. In addition, consent to one transfer or assignment does not waive the consent requirement for future transfers or assignments.

23.02. Sublease. Notwithstanding Paragraph 23.01, the Lessee may enter into subleases so long as:
(i) the sublessee is not a Non-Qualifying party;
(ii) the sublease shall prohibit further assignments or subletting of the Premises, must provide that it is subject to the terms and conditions of this Lease and is subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and the term shall not extend beyond the Term of this Lease set forth in Section 3; and
(iii) the sublease provides that, if by reason of a default on the part of the Lessee under this Lease, this Lease or the leasehold estate created hereunder is terminated, then such sublessee shall, at the sole and absolute discretion of the Government, as the lessor, attorn to the Government the terms and conditions set forth in the Lease and will recognize the Government as such sublessee’s lessor under such sublease, provided that Government accepts such attornment, having no obligation to do so.
Within thirty (30) days of execution of a sublease, Lessee shall provide a copy of such sublease to the Government.
24. **LEASES TO TENANTS**

The standard form lease to be utilized between Lessee and tenants of the Facility(ies) shall include, but not be limited to, the following lease provisions, or shall otherwise be subject to Lessor's reasonable approval:

(A) Each lease must incorporate all lease provisions referred to herein which are required to be included in any sublease of the Premises, including but not limited to the environmental warranties, representations and indemnities; the “use” restrictions; in the Facility(ies);

(B) Each lease will grant no greater parking rights than are granted under this Lease;

(C) If an Event of Default shall occur under this Lease, each tenant must agree, upon demand made by Lessor, to make all rental payments under its lease directly to Lessor;

(D) Any default notices sent by Lessee under the sublease must be simultaneously sent to Lessor;

(E) Each lease shall provide that it will automatically terminate upon a termination of this Lease; provided, however, that Lessor agrees not to terminate any lease where a written subordination, non-disturbance and attornment agreement is entered into between Lessor and a tenant, in form acceptable to Lessor.

25 **MORTGAGE OF THE PREMISES AND/OR IMPROVEMENTS**

(A) Nothing contained in this Ground Lease shall be construed as authorizing Lessee to encumber the fee simple interest of the United States of America with respect to the Premises and Facility thereon upon expiration or termination of the Ground Lease, in any manner whatsoever, except that Lessee may assign, pledge and/or hypothecate its rights hereunder as contemplated in Article 23, TRANSFERS/ASSIGNMENTS, and in this Article 25. Such fee interest with respect to the Premises and the Facility thereon shall not be subordinated or otherwise made subject to any deed of trust, mortgage, or other lien or encumbrance granted, suffered or permitted by Lessee with respect to the Premises, the Facility and/or the Improvements.

(B) Except as provided herein, Lessee covenants that it shall not: (i) engage in any financing or other transaction creating any mortgage upon the Premises; (ii) place or suffer to be placed upon the Premises and/or the Improvements any lien or other encumbrance; or (iii) suffer any levy or attachment to be made on Lessee’s leasehold interest in the Premises, the Facility and/or the Improvements, other than such levy or attachment as may result from a
foreclosure of a mortgage, lien or encumbrance. Any mortgage, lien, or encumbrance which is not permitted shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced, unless said mortgage, lien, or encumbrance is removed within five (5) days after Lessee receives written notice of the execution or filing of such mortgage, lien, or encumbrance.

(C) During the Term of this Ground Lease, Lessee may encumber its leasehold interest in the Premises, the Facility and any Improvements by arranging for Financing with a Leasehold Mortgagee. Copies of all loan documents associated with the Financing shall be provided to Lessor. The Financing may be further secured by a collateral assignment of this Ground Lease by Lessee to the Leasehold Mortgagee. Lessor, if requested, agrees to execute an estoppel certificate or any similar documentation as may reasonably be requested by the Leasehold Mortgagee for the purpose of consenting to Lessee’s collateral assignment of this Ground Lease and certifying as to the status of this Ground Lease and to the performance by Lessee of its duties and obligations hereunder as of the date of such certification. Lessee’s duties and obligations under this Ground Lease incurred prior to the date of any foreclosure shall survive the termination of this Ground Lease. The proposed holder of any such mortgage, deed of trust, or security agreement must be approved in writing by the Lessor prior to the execution of such loan, which approval shall not be unreasonably withheld or delayed, so long as the mortgagee is not a Non-Qualifying Party as defined below. The Lessor will provide its notice of approval or disapproval within sixty (60) days of receipt of such request, which request shall be furnished pursuant to the Notice provisions in Paragraph 31. Any mortgagee approved by the Lessor or successor or assignee of such mortgagee approved by the Lessor shall be referred to in this Lease as an “Approved Mortgagee.” In no case will the Lessor be required to approve the transfer, assignment, sublease, or mortgage of this Lease to a Non-Qualifying Party. For the purposes of this Lease, a Non-Qualifying Party means a party that is (i) on the most current "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" published at https://www.sam.gov/, as said list may be updated from time to time, and/or (ii) a country listed in the most current Department of State publication required by 22 U.S.C. § 2656f and currently titled Country Reports on Terrorism, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and available at http://www.state.gov/j/ct/rls/crt/.

(D) Promptly after assigning this Ground Lease or encumbering the Premises or the Facility and Improvements as provided herein, Lessee shall furnish Lessor a written notice setting forth the name and address of such Leasehold Mortgagee. Further, Lessee shall notify Lessor promptly of any lien or encumbrance which has been created or attached to the Premises, the Facility or the Improvements or to Lessee’s leasehold interest in the Premises, the Facility
or the Improvements, whether by act of Lessee or otherwise, of which the Lessee itself has notice.

(E) The rights of any Leasehold Mortgagee shall be conditioned upon such holder providing Lessor written notice of any default by the Lessee.

(F) If a Leasehold Mortgagee or purchaser at a foreclosure sale shall acquire the Lessee’s leasehold estate, this Ground Lease shall continue in full force and effect for its Term notwithstanding the payment of any obligation created in connection with such financing and secured by such Leasehold Mortgage and purchaser shall be fully bound by the provisions of this Ground Lease (except to the extent that any unperformed obligations of Lessee at the time of foreclosure are personal in nature and incapable of being performed by the Leasehold Mortgagee or such purchaser).

(G) Upon the Lessee’s failure to perform any of the terms and conditions of this Ground Lease, thereby constituting an occurrence of an Event of Default by Lessee as described in Article 26, TERMINATION BY LESSOR, Lessor shall provide a copy of the notice of such Event of Default to the Leasehold Mortgagee. The Leasehold Mortgagee shall have the right to cure said Event of Default on or before that day which is thirty (30) days after expiration of the time period provided to Lessee hereunder to cure such default, and Lessor may not exercise any of the remedies available to it until the expiration of such cure period; provided, however, that if in connection with such Event of Default, the Leasehold Mortgagee commences and diligently continues an action to acquire title to the Lessee’s leasehold estate, the Leasehold Mortgagee shall have such reasonable additional time as is necessary to complete such action to obtain such title.

(H) Following any default or Event of Default of the Lessee under any Leasehold Mortgage, the rights of any Leasehold Mortgagee under such Leasehold Mortgage shall be conditioned upon such Leasehold Mortgage providing Lessor, prior to any foreclosure sale, termination sale, or transfer, notice of the intent to exercise its remedies under the Leasehold Mortgage and giving Lessor the option to acquire the leasehold estate for an amount equal to the payment in full of all amounts owed under, evidenced, and secured by such financing. Such option shall remain open for sixty (60) days following delivery of written notice to Lessor. If Lessor takes advantage of such option and makes such payment within such sixty (60) day period, Lessor shall acquire an interest in the leasehold estate equivalent to the Lessee’s interest which would have been extinguished by the exercise of Leasehold Mortgagee’s remedies under the financing. If Lessor does not take advantage of such option and/or fails to make such payment within the sixty (60) day period, then the Leasehold Mortgagee will be permitted to proceed with the exercise of its remedies. The aforesaid option to redeem the leasehold estate shall only be available to Lessor if the Leasehold
Mortgagee intends to sell the leasehold estate at foreclosure to an unrelated third party.

(I) There shall be no cancellation, surrender or modification of this Ground Lease by Lessor or Lessee without the prior written consent of any Leasehold Mortgagee. Notwithstanding the foregoing (but, in any event, subject to a Leasehold Mortgagee’s curative rights set forth in Paragraph (G) of this Article 25), nothing herein shall be deemed to prohibit the Lessor from exercising its rights and remedies upon an Event of Default by the Lessee or to determine Rental Consideration in accordance with its terms as provided in this Ground Lease.

(J) Lessee agrees that in the event of any foreclosure under any Leasehold Mortgage, either by judicial proceedings or under power of sale contained therein, all right, title, and interest encumbered by such Leasehold Mortgage may under a public sale and with the consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed, be assigned to and vested in the purchaser at such foreclosure sale (a “Permitted Transferee”). Any sale and subsequent use of the leasehold estate at any such proceedings must be compatible with and not interfere with Lessor’s use of the BNL site, create a security risk to the United States of America’s interests or operations at BNL. If the purchaser at any such proceedings or sale is a Leasehold Mortgagee or its affiliate or a party that had contracted with such Leasehold Mortgagee, then, unless such party is a bank or other nationally recognized financial institution authorized to do business in the United States of America and/or a wholly owned subsidiary of such bank or financial institution, an assignment to such party shall require the prior consent of Lessor, not to be unreasonably withheld, conditioned, or delayed. All such sales and transfers shall be subject and subordinate, however, to the rights, title and interests of Lessor under this Ground Lease. Upon a foreclosure or, prior to any foreclosure, within thirty (30) days after any termination of this Ground Lease by reason of any Event of Default by Lessee hereunder (including, without limitation, any termination of this Ground Lease in connection with any bankruptcy or similar proceeding), Lessor agrees to amend this Ground Lease or execute a replacement lease, for the remaining Term of the Lease, upon the same terms and conditions hereof with such Leasehold Mortgagee or subsequent purchaser.

(K) Notwithstanding any other provisions of this Ground Lease, Lessee agrees that any Leasehold Mortgagee permitted under this Lease shall in no manner or respect whatsoever be (i) liable or responsible for any of Lessee’s obligations or covenants under this Ground Lease (nor shall any rights of such Leasehold Mortgagee be contingent on the satisfaction of such obligations or covenants), or (ii) required to cure any Event of Default by Lessee; provided, however, that if such Leasehold Mortgagee (or any purchaser at a foreclosure sale or any subsequent person or entity to whom the leasehold estate hereunder may be subsequently assigned pursuant to Paragraph (J) of this Article 25)
becomes the owner of the leasehold estate created hereunder or becomes the lessee under a Replacement Lease, then such Leasehold Mortgagee or other person or entity shall be responsible and liable for all obligations and covenants accruing during such Leasehold Mortgagee’s or such other person’s or entity’s tenure as owner of such leasehold estate or as lessee as defined.

26. TERMINATION BY LESSOR

(A) Lessor may terminate this Ground Lease if Lessor determines that Lessee has failed to perform any of the terms and conditions of this Ground Lease, provided that Lessor shall give Lessee (with a copy to any Leasehold Mortgagee) written notice to cure the failure. In the event that Lessee does not cure or cause to be cured or does not diligently commence or cause to be commenced to cure the failure within thirty (30) days after receipt of the notice (provided that such cure period shall be extended by Lessor by an additional ninety (90) days only if such failure cannot reasonably be cured within thirty (30) days, Lessee is diligently attempting to cure such failure, and such cure can be made within the 90 days extension), then such failure, until cured or remedied, shall constitute an "Event of Default" by Lessee, for which Lessor may terminate this Ground Lease. Lessor may provide Lessee with a shorter period of time to cure the deficiency if required by the exigencies of the occurrence. In the event Lessor terminates this Ground Lease under this paragraph, Lessor shall be entitled to recover from Lessee:

(1) The reasonable expenses incurred by Lessor to terminate this Ground Lease; and
(2) The reasonable costs Lessor incurs to perform the term or condition which Lessee failed to perform.

(B) The Lessor and Lessee expressly agree that the failure of the Lessee to complete the Facility, as evidenced by a Certificate of Occupancy within ___ months of the execution of the Ground Lease, shall be an Event of Default. At Lessor’s sole discretion, the ___ months completion time limit may be extended to what Lessor considers a reasonable period to complete the Facility.

(C) In the event the Lessee or sublessee does not utilize the Facility for a period of one (1) year at any time within the terms of this Lease, this Lease may be considered revoked and all rights under the Lease shall revert to the Lessor.

(D) The Lessor may terminate this Lease at any time without notice in the event of a national emergency or in the interest of national defense. Lessor may terminate this Lease at any time by giving ninety (90) days written notice by DOE’s Real Estate Contracting Officer to the Lessee under any of the following circumstances:
(1) If BNL closes or is scheduled to be closed or a major portion of the site becomes excess to the needs of DOE.

(2) If the mission of DOE or BNL changes or there is no requirement for continued operations of the facilities at BNL.

(E) In the event of an Event of Default by Lessee, Lessor also may exercise any other right, remedy, or privilege which may be available to it under this Ground Lease or under applicable federal, state or local law. All remedies shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. Failure to exercise a remedy shall not constitute a waiver thereof. Notwithstanding the foregoing, Lessee’s failure to take any action hereunder or fulfill any obligation hereunder that is a result of failure of Lessor to provide required approvals or directions set forth in this Ground Lease or in any other applicable document will not be deemed to be an Event of Default by Lessee hereunder.

(F) The failure of Lessor to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Ground Lease shall not be construed as a waiver or relinquishment of Lessor’s right to the performance of any such terms, covenants, or conditions and Lessee’s obligations with respect to such performance shall continue in full force and effect.

(G) Upon termination of this Ground Lease, all rent and other rent charges paid in advance shall be apportioned as of the date of termination; provided that, Lessor shall not be obligated to refund Lessee’s share if the Lessee has any remaining financial obligations to Lessor under this Ground Lease until the same are satisfied.

27. RESTORATION AND SURRENDER

(A) Not later than two (2) years prior to the expiration of this Ground Lease, the Lessee shall provide the Lessor with a written notice that Lessee; (i) intends to seek an extension of the Ground Lease for a set number of years at a mutually agreed upon fair market value rent or (ii) Lessee’s intent to let the Ground Lease expire and restore the Premises. In the latter event, Lessee, at its sole expense, shall restore the Premises to the condition it was in on the effective date of this Ground Lease. The Parties shall enter into a reasonable extension of the Ground Lease in order to accomplish such restoration. During this extension period all obligations under this Ground Lease shall remain in full force and effect.

(B) On or before the date of expiration of this Ground Lease or termination of this Ground Lease pursuant to Article 26, TERMINATION BY LESSOR, Lessee shall vacate the Premises and remove all of Lessee’s personal property from the
Facility and the Premises. If Lessee shall fail, refuse, or neglect to remove such personal property, then at the option of Lessor, such personal property shall either become the property of Lessor, without compensation therefore, or Lessor may cause it to be removed and/or destroyed at the expense of the Lessee, and no claim for damages against Lessor, its officers, or agents shall be created or made by or on account of such removal and/or destruction.

(C) If this Ground Lease is terminated by the Lessor, notwithstanding any other remedy provided herein, the Lessor shall, within 120 days of the termination date, provide the Lessee with a written determination and notice whether; (i) the Lessor shall purchase the Facility at a mutually agreed upon price or (ii) Lessor shall decline to purchase the Facility. In the latter event, Lessee, at its sole expense, shall restore the Premises to the condition it was in on the effective date of this Ground Lease. The parties shall negotiate the date of the completion of the restoration. If Lessee fails to make such restoration by the negotiated date, Lessor shall have the right, but not the obligation, to restore the Premises at Lessee’s expense. During this period of restoration all obligations, including the Lessee’s obligation to pay rent, shall remain in force and effect.

28. DEFAULTS AND REMEDIES

(A) Each of the following events shall be a default by Lessee and a breach of this Lease and constitute an "Event of Default":

(1.) Abandonment of the Premises, or the improvements now or hereafter constructed thereon, where such abandonment continues for a period of sixty (60) days after notice thereof by Lessor to Lessee.

(2.) The subjection of any right or interest of Lessee in the Premises to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days.

(3.) The appointment of a receiver to take possession of the Premises or improvements thereof, or of Lessee's interest in the leasehold estate or of Lessee's operations on the Premises, for any reason, including but not limited to assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (a) pursuant to administration of the estate of any deceased or incompetent individual member of any Lessee, or (b) pursuant to any collateral assignment permitted by the provision of this Ground Lease relating to the purchase or construction of improvements, or (c) instituted by Lessor, the event of default being not the appointment of a receiver at Lessor's instance, but the event justifying the receivership, if any.
(4.) An assignment by Lessee for the benefit of creditors, or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee as bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liabilities; or reorganization, dissolution, or arrangement on account of, or to prevent bankruptcy or insolvency; unless, in case of such that are involuntary on Lessee's part, the assignment, proceedings, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or terminated within sixty (60) days after the assignment, filing or other initial event.

(5.) Any default under any collateral assignment encumbering the leasehold estate of this Ground Lease, or under any loan agreement or promissory note secured by any such collateral assignment which is not cured by Lessee within the applicable cure period, if any, or not otherwise waived in writing by any leasehold collateral assignment.

(6.) Failure of Lessee to pay any installment of Base Annual Rent, rent, additional rent, or any impositions or other monetary obligations of any nature whatsoever required to be paid by Lessee under this Ground Lease when due and payable; or failure of Lessee to observe or perform any of its other covenants, conditions or agreements under this Ground Lease or under the terms of any loan documents which encumber the leasehold interest in the Premises, the Facility(ies) or any part thereof or interest therein; or the breach of any warranties or representations of Lessee under this Ground Lease. All monetary payments required to be made under this Lease, including, but not limited to, taxes, insurance premiums, utility payments, and association assessments, together with all other sums Lessee is obligated to pay under this Lease (other than rent), shall be deemed additional rent hereunder.

(7.) If the alleged default is monetary in nature such as (but not limited to) nonpayment of rent, taxes or any other sums required to be paid by Lessee, Lessor shall have no obligation to deliver written notice to Lessee of the default; however, Lessee will have ten (10) days after the date the payment is due to cure the default. As to any non-monetary defaults, Lessee shall have ten (10) days after written notice is given by Lessor specifying the nature of the default to cure the default; provided, however, that if after exercise of due diligence and its best efforts to cure such non-monetary default Lessee is unable to do so within the ten (10) day period, then the curing period shall be extended for such reasonable time as may be approved by Lessor for curing such default, so long as Lessee continues to diligently prosecute to completion the curing of the default, which in no event shall exceed sixty (60) days unless specifically agreed to in writing by Lessor. As used herein, non-monetary default shall include, without limitation, a breach of any covenant of Lessee hereunder,
Lessee’s failure to perform as required hereunder, and a breach of any warranty, representation or other agreement of Lessee under this Ground Lease. If the alleged default is nonpayment of monetary obligations under Section 28(A)(5.), Lessee shall have fifteen (15) days after the happening of the default under the note or mortgage to cure the default of this Article 28(A)(5.) above.

29. **HOLDOVER**

If Lessee remains in possession of the Premises or any part thereof after the expiration or sooner termination of the Term, Lessee shall become a tenant at sufferance and shall pay the Lessor a rent equal to twice the Rent paid by Lessee in the last month prior to the expiration or termination of the Lease, which shall be payable on a per diem basis, not to exceed the amount permitted to be charged by a lessor under applicable law. Notwithstanding that Lessor may allow Lessee to continue in possession after the expiration or sooner termination of this Ground Lease, neither that nor the provisions of this section shall constitute a waiver of any of Lessor’s rights under this section or this Ground Lease. Further, notwithstanding the payment of rent by Lessee and acceptance thereof by Lessor as provided in this section, Lessee shall be in continuing breach of this Lease at any time or during any period in which Lessee is a holdover tenant.

30. **GENERAL PROVISIONS**

(A) All of the provisions of this Ground Lease shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

(B) All representations, warranties and indemnities of Lessee under this Ground Lease shall survive the expiration or sooner termination of this Ground Lease.

(C) No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Ground Lease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Ground Lease, but each and every covenant, condition, agreement and term of this Ground Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

(D) If either party shall be delayed or prevented from the performance of any act required by this Ground Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be
excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this section shall excuse Lessee from the prompt payment of any rental or other charge required of Lessee except as may be expressly provided elsewhere in this Ground Lease.

31. NOTICES

All notices regarding the specific terms and conditions of this Ground Lease shall be in writing and shall be deemed effectively given upon personal delivery or upon mailing by registered or certified mail, postage prepaid, and addressed to the designated representative of Lessor or Lessee, as appropriate, or the representative’s successor at the following respective addresses, or to such other persons or at such other addresses within the continental United States as may be designated in writing by either party to the other.

If to Lessor:  
Susan Bourgart, Real Estate Contracting Office  
U.S. Dept. of Energy  
Office of Acquisition & Business Service  
Business Division – Property Management Team  
Office of Science Consolidated Service Center  
9800 S. Cass Ave  
Lemont, IL  60439

Robert Gordon, Site Office Manager  
Brookhaven Site Office  
U.S Department of Energy  
53 Bell Avenue, Building 464  
Upton, NY  11973

If to Lessee:

32. COVENANT AGAINST CONTINGENT FEES

Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Ground Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, Lessor shall have the right to annul this Ground Lease without liability or in its discretion to add to the rental price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practices, and
who have not obtained such licenses for the sole purpose of effecting this Ground Lease, may be considered as bona fide employees or agencies within the exception contained in this Article).

33. OFFICIALS NOT TO BENEFIT

The right of the Lessee to proceed may be terminated by written notice, if after notice and hearing, DOE determines that the Lessee or sublessee(s), agents, or representatives offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of Lessor and intended, by the gratuity to obtain this lease or favorable treatment under this Lease. The facts supporting this determination may be reviewed by any court having lawful jurisdiction. If this Lease is terminated as set forth within this Condition, Lessor is entitled to pursue the same remedies as in a breach of the Lease. The rights and remedies of Lessor provided in this Article shall not be exclusive and are in addition to any rights and remedies provided by law or under this Lease. Furthermore, no member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Ground Lease, or to any benefit arising from it. However, this Article does not apply to this Ground Lease to the extent that this Ground Lease is made with a corporation for the corporation’s general benefit.

34. FACILITIES NONDISCRIMINATION

Usage of the Premises and Facilities will be operated in a nondiscriminatory manner to the end that no person shall, on the ground of race, color, religion, sex, age, disability, or national origin, be excluded from using the Premises or Facilities leased.

35. PROTECTION OF THE ENVIRONMENT AND CULTURAL RESOURCES

(A) The Lessee, sublessee(s), and/or tenants shall not unlawfully pollute the air, ground or water or create a public nuisance. The Lessee, sublessee(s), and/or tenants shall use all reasonable means available to protect the environment and natural resources from damage arising from this Lease or activities incident to it and, where damage nonetheless occurs, the Lessee, sublessee(s), and/or tenants shall be liable to restore the damaged resources. The Lessee, sublessee(s), and/or tenants shall at no cost to Lessor promptly comply with present and future Federal, State, and local laws, ordinances, regulations, or instructions controlling the quality of the environment. This does not affect the Lessee’s, sublessee(s), and/or tenant’s right to contest their validity or enjoin their applicability. The Lessee, sublessee(s), and/or tenants shall not be responsible for pollution caused by others. If the Lessee, sublessee(s) and/or tenants discovers contamination not previously identified on the premises, the Lessee shall immediately cease activities in the area of contamination and notify Lessor.

(B) Lessee shall not remove or disturb, or cause to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics,
vestiges, remains, or objects of antiquity. In the event such items are discovered on the Premises, Lessee shall immediately notify Lessor and protect the site and the material from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the Lessor.

(C) Lessee will use all reasonable means to protect the environment and natural resources from damage arising from this Ground Lease or activities incident to it and shall not remove or disturb threatened or endangered plant or animal species. Where damage nonetheless occurs, Lessee shall be liable to restore the damaged resources. Lessee shall be responsible for complying with the Endangered Species Act, and any other statutory or regulatory requirements affecting protection of natural resources.

36. AVAILABILITY OF FUNDS

The performance by Lessor of any of the terms, covenants, or conditions in this Ground Lease which Lessor is obligated to perform shall be subject to the availability of funds appropriated and allotted by the United States Congress to the Department of Energy for operation of the Brookhaven National Laboratory. There is no assurance that the United States Congress will, at a later date, appropriate sufficient funds.

37. RECITALS AND EXHIBITS

Ground Lease Recitals and the Exhibits attached hereto are by this reference incorporated herein and made a part of this Ground Lease.

38. POSTING OF SIGNS

No signs or advertisements shall be placed upon the Premises or Facilities except those signs and locations required by applicable codes, ordinances, other governmental regulations or Lessor/BNL requirements or Lessee/sublessee(s) identification signs, all of which shall be approved in writing by Lessor prior to installation. The costs of erecting and maintaining such signs shall be borne by the Lessee.

39. DISPUTES

Except as otherwise provided in this Lease, any dispute concerning a question of fact arising under this Lease which is not disposed of by agreement shall be decided by the Real Estate Contracting Officer, who shall reduce the decision to writing and mail or otherwise furnish a copy to the Lessee. The decision of the Real Estate Contracting Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessee mails or otherwise furnish to the Real Estate Contracting Officer a written appeal addressed to the Secretary of Energy. The written decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless the Lessee, within ninety (90) days,
brings an action in a Federal court of competent jurisdiction, contesting the Secretary's decision. If such an action is brought, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. In connection with any appeal proceeding under this condition before the Real Estate Contracting Officer, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with its performance and in accordance with the decision of the Real Estate Contracting Officer.

40. MEMORANDUM OF GROUND LEASE

The parties shall execute and record a Memorandum of Ground Lease:

IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease Agreement in several counterparts.

LESSOR: THE UNITED STATES OF AMERICA
Represented by the
UNITED STATES DEPARTMENT OF ENERGY

By: _______________________________
Name: Susan J. Bourgart
Title: Real Estate Contracting Officer
Date:

LESSEE:

By:
Name:
Title:
EXHIBIT A

LEGAL DESCRIPTION OF PREMISES
EXHIBIT B

LIST OF HAZARDOUS SUBSTANCES
As of _________________

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or “Superfund”) 42 U.S.C. Section 9620(h).
EXHIBIT C

PERMITTED EXCEPTIONS
EXHIBIT D

CONSTRUCTION PLANS AND SPECIFICATIONS
EXHIBIT E

PROJECT COSTS
EXHIBIT F

ADDITIONAL SITE WORK
EXHIBIT G

MEMORANDUM OF LEASE
EXHIBIT I

EASEMENTS