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PART I—THE SCHEDULE

SECTION H—SPECIAL CONTRACT REQUIREMENTS

H-1. Modification Authority

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

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

H-2. Small Business Subcontracting Plan

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

H-3. Confidentiality of Information

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in the public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all appropriate subcontracts.

H-4. Service Contract Act (Modified)

The Service Contract Act of 1965 (P.L. 89-286) is not applicable to contracts for the operation of DOE facilities. It is, however, applicable to subcontracts awarded by contractors operating DOE facilities. The Contractor shall insert in all subcontracts of the character to which the Service Contract Act, as amended, applies the applicable clause specified in FAR 22.1006, with such modifications as appropriate to reflect the contractor/subcontractor relationship.

H-5. Corporate Home Office Expenses

No corporate home office expense of the Contractor shall be allowable under this contract without the prior approval of the Contracting Officer and consistent with the requirements set forth in Acquisition Letter AL-2005-11, dated July 15, 2005.

H-6. Age Discrimination in Employment

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

H-7. Separate Corporate Entity

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

H-8. Performance Guarantee

The Contractor is required by other provisions of this contract to organize a dedicated corporate entity to carry out the work under the contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated in the contract in Section J, Appendix C. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H-9. Responsible Corporate Official

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

Name: Dr. Carl F. Kohrt
Position: President and Chief Executive Officer
Organization: Battelle Memorial Institute
Address: 505 King Avenue
Columbus, Ohio 43201-2693

H-10. Permits, Applications, Licenses, and Other Regulatory Documents (Modified)

- (a) Unless otherwise directed by the Contracting Officer, the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the contract. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for operations under this contract

(hereinafter referred to collectively as ‘permits’). Except as specifically provided in the section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.

- (b) Unless otherwise authorized by the Contracting Officer, the Contractor must submit to DOE for DOE’s review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.
- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
- (e) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility for such permits and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor contractor or DOE.

H-11. Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties

- (a) The Contractor shall accept, in its own name, services of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or state regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this Contract.
- (b) With advance notice given to DOE, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fines and penalties issued in its own name; however, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without receiving written concurrence from the Contracting Officer or his/her authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.
- (c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H-12. Allocation of Responsibilities for Contractor Environmental Compliance Activities (Modified)

- (a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "parties" for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.
- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

- (c) Regardless of which party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitation, paragraph (a) of the clauses in Section I entitled “Pre-Existing Conditions.”

H-13. Representations, Certifications and Other Statements of the Offeror

The Representations, Certifications, and Other Statements of the Offeror, dated August 2, 1999, for this contract are hereby incorporated, by reference, and made a part of this contract.

H-14. Withdrawal of Work

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Descriptions/Specifications/Work Statement, of this contract performed by either another contractor or to have the work performed by Government employees.
- (b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the Contractor’s estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Contractor; or, (4) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- (c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H-15. Contractor Assurance System

- (a) The Contractor shall develop a Contractor Assurance System that is approved and monitored by the Contractor’s Board of Directors. This Contractor Assurance System, at a minimum, shall have the following key attributes:
 - (1) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.

- (2) A method for validating processes. Third party audits, peer reviews, independent assessments and external certification (such as VPP and ISO 9001 or ISO 14001) may be used in validating the Contractor's assurance system.
 - (3) A process for notifying the Contracting Officer of significant assurance system changes.
 - (4) Rigorous, risk-based, credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve its work process and to carry out independent risk and vulnerability studies.
 - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (6) Integration of the assurance system with other management systems including Integrated Safety Management.
 - (7) A process for defining metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.
 - (8) Continuous feedback and performance improvement.
 - (9) An implementation plan for the Contractor Assurance System.
 - (10) A process for timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.
- (b) The Government may revise its level of oversight of this contract when the Contracting Officer determines that the Contractor Assurance System is operating effectively.

H.16 Application of DOE Directives and Alternatives

- (a) **Performance** The Contractor shall perform the work of this contract in accordance with each of the DOE directives appended to this contract as Section J, Appendix E unless the Contracting Officer approves the substitution of an alternative procedure, system of oversight, or assessment mechanism resulting from the process described below.

- (b) **Laws and Regulations Excepted** This clause augments the requirements in Section I entitled, “Laws, Regulations, And DOE Directives,”(DEAR 970.5204-2) and DOE M 251.1-1A for purposes of addressing alternatives to DOE directives. The process described in this clause does not affect the application of applicable laws and regulations.
- (c) **Deviation Processes in Existing Orders** This clause does not preclude the use of deviation processes provided for in existing DOE directives.
- (d) **Proposal of Alternative** The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, system of oversight, or assessment mechanism to the requirements in a listed directive by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized in performance under the contract, and a schedule for implementation of the alternate. The Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the proposal.
- (e) **Action of the Contracting Officer** The Contracting Officer shall within sixty (60) calendar days:
- (1) Deny application of the proposed alternative;
 - (2) Approve the proposed alternative, with conditions or revisions;
 - (3) Approve the proposed alternative; or
 - (4) Provide a date by which a decision shall be made (not to exceed an additional sixty (60) calendar days).
- (f) **Implementation and Evaluation of Performance** Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. This statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. The Government shall evaluate performance of the approved alternative from the Contractor’s scheduled date for implementation.

- (g) **Application of Additional or Modified Directives** During performance of the contract, the Contracting Officer may notify the Contractor that s/he intends to unilaterally add directives not then listed in Section J, Appendix E entitled “List of Applicable DOE Directives (List B)” or make modifications to listed directives. Within thirty (30) calendar days of receipt of that notice, the Contractor may, in accordance with paragraph (d) of this clause, propose an alternative procedure, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted within the thirty (30) calendar-day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the directive or modification to Section J, Appendix E. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the directive or modification.
- (h) **Deficiency and Remedial Action** If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, at his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer’s approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the directive.

H-17. Personal Property Acceptance

On April 1, 2000, the Contractor shall accept, as is, where-is, accountability for all Government-owned property and all special nuclear materials assigned to this contract. The Contractor shall maintain and administer the existing automated personal property system. Any deviation from this requirement is subject to the prior written approval of the Contracting Officer.

H-18. Privacy Act Systems of Record (Modified)

To the extent that the Contractor maintains Government-owned records in the performance of this contract that constitutes a Privacy Act System of Records as defined in the Department of Energy’s most current Privacy Act System Notice published in the Federal Register on or after June 30, 2003, the Contractor shall maintain the records in accordance with the clause of this contract entitled Privacy Act.

H-19. Determination of Appropriate Labor Standards

DOE shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. The Contractor shall provide such information in the form and time frame required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts, and for obtaining and applying the appropriate wage determinations.

H-20. Application of Labor Policies and Practices

The Contractor agrees to conduct its labor relations program in accordance with DOE's intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the successful accomplishment of DOE's programs at reasonable cost. Collective bargaining will be left to the orderly processes of negotiation and agreement between Contractor management and certified employee representatives with maximum possible freedom from Government involvement. For working on DOE facilities and programs critical to the National interest, Contractor management's responsibility includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships.

H-21. Price Anderson Amendments Act Noncompliance

The Contractor shall establish an internal Price Anderson Amendments Act noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H-22. Nuclear Facility Safety (Modified)

- (a) The activities under this contract include the operation of nuclear facilities as defined by 10 CFR § 830 Subpart B. The Contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor shall exercise a degree of care commensurate with the risk involved.
 - (1) The Contractor shall use all reasonable efforts to perform operations and maintenance activities in the nuclear facilities.

- (2) The Contractor shall establish and maintain an assessment program (including review and inspection), with follow on commitment tracking, corrective action tracking, including performance of effectiveness reviews to ensure safe operations of nuclear facilities.
 - (3) The Contractor shall prepare a plan or plans that minimize the risk of operating nuclear facilities. The plan or plans should describe work activities that are prioritized to mitigate and/or address hazards/critical issues.
 - (4) The Contractor shall prepare plans for Contracting Officer Representative approval that describe actions to shutdown, decontaminate and/or decommission, and disposition the nuclear facility and any associated nuclear wastes or other hazardous material.
- (b) The Contractor shall comply with all applicable regulations (as defined by the contract) of DOE concerning nuclear safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear safety of which it is notified in writing by the Contracting Officer.

H-23. Defense Nuclear Facility Safety Board

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect contract work. Based on Contracting Officer's Representative direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H-24. Environmental Justice (Modified)

The Contractor shall embrace the principles of Environmental Justice by complying with all applicable regulations and orders and by focusing on nondiscrimination in its programs that affect human health and the environment.

H-25. Stop Work/Technical Direction (Modified)

In addition to the authorities enumerated in the clause in section I entitled "Technical Direction," the contracting officer's representative (COR) may direct the Contractor to suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition which could be expected to cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

H-26. Corporate Citizenship (Modified)

- (a) The Contractor is expected to be a good corporate citizen and partner with the community in which the Contractor performs its work. Corporate citizenship entails active company and employee involvement in both financial and nonfinancial ways in local area educational, cultural, civic, health and welfare organizations, etc.
- (b) The cost associated with the Contractor's efforts in achieving its corporate citizenship commitment under this clause is not an allowable cost under this contract.

H-27. Contractor Compensation, Benefits and Pension (Modified)

- (a) Clauses H.21, H.33, and Appendix A are adopted for the exclusive benefit and convenience of the parties hereto; nothing contained herein shall be construed as conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party.
- (b) Labor Relations
 - (1) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
 - (2) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing and obtaining approval of the Contractor's bargaining parameters prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing

to any collective bargaining proposal which is outside of the agreed upon bargaining parameters and can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or retirement income plans or to any welfare benefit plans if these changes are outside of the agreed upon bargaining parameters.

(c) Salary and Benefits

(1) Policies, Practices, and Procedures

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with 48 CFR 31.205-6, and DEAR 970.3102-05-6, "Compensation for personal services," as applied to the DOE-approved standards in Appendix A. The Contractor's compensation system and methods shall be in accordance with 48 CFR 31.205-6 and DEAR 970.3102-05-6, fully documented, consistently applied, and acceptable to DOE.

DOE approval of the Contractor's job evaluation and compensation system, dated April 4, 2001, provides the baseline for the Contractor's compensation system.

Based on DOE's approval of the Contractor's Compensation System, Contracting Officer approval of individual compensation actions will be required only for the Laboratory Director and Deputy Director(s).

(2) Severance Pay

Severance pay benefits are not payable to an employee under this contract if the employee:

- (i) Voluntarily separates, resigns or retires from employment, with the exception of a Voluntary Reduction in Force (VRIF) Program. All VRIF programs require prior DOE approval.
- (ii) Is offered employment with a successor/replacement Contractor,
- (iii) Is offered employment with a parent or affiliated company, or
- (iv) Is discharged for cause.

(3) Reporting Requirements

The Contractor shall provide the Contracting Officer with the following reports with respect to salary and benefits:

- (i) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (ii) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.
- (iii) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.
- (iv) A Self-Assessment of the total compensation program using mutually agreed to compensation system performance measures.
- (v) Annual report of employment, payroll and residence statistics as of December 31 for each year.

(4) Periodic Appraisals

DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of Contractor self assessments of compensation system performance, or third party expert review.

(5) Incentive Compensation/Pay Program

Develop an Incentive Pay Plan annually, if appropriate, for a determination of cost reasonableness and reimbursement consistent with the requirements for reimbursement provided in Appendix A, and obtain advance DOE approval of the Incentive Pay Plan.

(d) Pension and Non-Pension Benefit Programs

The program of employee pensions and other benefits employed by the Contractor shall support at a reasonable cost the effective recruitment and retention of a highly skilled workforce at ORNL. Cost reimbursement of benefit

plans will be based on Contracting Officer approval of Contractor actions pursuant to an approved “Employee Benefits Value Study” and an “Employee Benefits Cost Survey Comparison.” No presumption of allowability will exist when the Contractor implements a new benefits plan or makes changes to existing employee benefits plans until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program. Unless required by State or Federal statute, funding in advance for post retirement benefits other than pensions (PRB) is not allowable.

Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of award or extension, and annually thereafter, and prior to implementation of any benefit change, the Contractor shall submit the following materials to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor’s documented program plan and are deemed allowable pursuant to 48 CFR 31.205-6 as supplemented by DEAR 970.3102-05-6.

- (1) An evaluation of the Contractor’s Employee Benefits Program based on two professionally recognized performance measures:
 - (i) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post-retirement benefits (PRB) other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources and,
 - (ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor’s employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans, when requested by the Contracting Officer, to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.
- (3) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action

plan to achieve conformance with a Contracting Officer directed per capita cost range.

- (4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in subparagraph (d)(2).
- (e) The Contractor shall comply with DOE Order 350.1 (Contractor Human Resource Management Programs). Upon issuance of the revised DOE Order, the Contractor shall meet with the Contracting Officer to negotiate implementation procedures.

H-28. Control of Nuclear Materials

- (a) As used in this clause, “nuclear materials” means source material, special nuclear material, and other materials to which DOE Directives regarding the control of nuclear materials apply.
- (b) The Contractor shall, in a manner satisfactory to the Contracting Officer, establish and maintain a materials management program, establish and maintain appropriate nuclear material transfer procedures and control measures, establish accounting and measurement procedures, maintain current records, and institute appropriate control measures for nuclear materials in its possession commensurate with the national security and applicable DOE Directives. Except as otherwise authorized by the Contracting Officer, nuclear materials in the Contractor’s possession, custody, or control shall be used only for the furtherance of the work under this contract.
- (c) The Contractor shall include in every subcontract involving the use of nuclear materials, for which the Contractor has accountability, appropriate terms and conditions for the use of nuclear materials and the responsibilities of the subcontractor regarding control of nuclear materials.

H-29. Unclassified Controlled Nuclear Information/Export Controlled Information

Documents, information, and/or equipment originated by the Contractor or furnished by the Government to the Contractor in connection with this contract may contain Unclassified Controlled Nuclear Information and/or Export Controlled Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended, DOE Directives, and U.S. laws and regulations. The Contractor shall be responsible for protecting such documents, information, and/or equipment from unauthorized dissemination in accordance with DOE regulations, requirements and instructions.

H-30. Oak Ridge Office Services (Modified)

Oak Ridge Office is responsible for multiple, broad-based programs which are managed by multiple prime contractors. In order to provide a net benefit to the government, the Contractor may elect to provide services to and/or obtain services from other DOE prime contractors in the performance of their respective responsibilities. The government may also direct the Contractor to obtain or provide services to or from other DOE prime contractors when it is in the best interest of the government, including the accomplishment of DOE responsibilities in which the capabilities of more than one contractor are required. When services are obtained under this provision, the Contractor shall maintain accountability and control of the work and shall execute agreements for the conduct of work with other prime contractors, as appropriate.

H-31. ORNL Advisory Board

In collaboration with DOE, the Contractor shall establish and maintain a high-level, broadly based Advisory Board to ensure that it receives independent scientific, technical, and management guidance and overview on the performance of the Contractor. The Contractor shall consult with DOE on the development or modification of a charter for the Board and report to the COR results from Advisory Board meetings. The Board shall include nationally prominent representatives from the academic community and from industry chosen for their diverse scientific and management skills and broad perspectives. Consistent with the provisions of the contract, the Board shall be responsible to the Contractor and shall provide overview and guidance concerning the performance of the Contractor relating to organization, planning, and program evaluation. In addition, the Board shall review and provide guidance to cooperative programs with universities, industry and other agencies, R&D emphasis and priority, and other appropriate issues to help ensure that ORNL continues to be a leading national R&D center of the highest quality.

H-32. Work Authorization System (Modified)

- (a) The Contractor and DOE shall mutually establish an annual Cost Estimate consistent with the Statement of Work and the work breakdown structure specified by the Contracting Officer. The Annual Cost Estimate will be developed, in conjunction with customers, prior to the start of the fiscal year or as early in the fiscal year as possible. In addition, the annual Cost Estimate will be updated at least twice a year, prior to May 15th and prior to August 15th of each year. The updated estimate will reflect actual work authorized in addition to planning for the balance of the year. The Annual Cost Estimate will be incorporated into Section J, Appendix D, of the contract.

- (b) DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed, issued, and revised in accordance with DOE requirements.
- (c) Order of precedence. This clause is of lesser order of precedence than the contract clauses in Section I entitled, "Obligation of Funds" and "Payments and Advances."
- (d) Notwithstanding the other provisions of this clause, the Contractor has, in the event of an emergency, authority to take corrective actions necessary to operate in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated, and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraphs (a) and (b) of this clause.

H-33. Performance Expectations (Modified)

Performance expectations encompassing Section C.2, Statement of Work (SOW), are mutually defined on an annual basis in the Performance Evaluation Plan.

Performance objectives will be used as a means for evaluating and improving Contractor performance. Prior to the beginning of each fiscal year under this contract, performance objectives to be applied to each expectation and the method in which the performance objectives will be evaluated will be established in accordance with the clause in Section I entitled, "Total Available Fee: Base Fee Amount and Performance Fee." A number of elements will be evaluated in assessing the performance of the Contractor. A Performance Evaluation and Measurement Plan shall be developed which will include the details related to the definition and evaluation of performance objectives.

H-34. Lobbying Restriction (Energy & Water Act, 2005)

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

H-35. Management System

The contractor shall maintain and administer a management system which includes the existing integrated system (Systems Applications and Products in Data Processing

[SAP]). Any deviation from this requirement is subject to the prior written approval of the Contracting Officer.

H-36. Limitation on Liability (Modified)

As the Contractor is a non-profit organization, the following provision shall apply:

- (a) The Contractor's liability for certain obligations, which it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations shall apply only to obligations the Contractor has assumed pursuant to the following provisions:
 - (1) Section I, Clause 970.5228, entitled, "Insurance-Litigation and Claims (Dec 2000)," paragraphs (h)(3) and (j)(2), except for punitive damages resulting from the Contractor managerial personnel's willful misconduct or lack of good faith.
 - (2) Section I, Clause 970.5245-, entitled, "Property (Dec 2000)," paragraph (f)(1)(i)(C).
- (b) The Contractor shall be liable for an amount not to exceed 1.25 times the maximum fee available for each fiscal year in accordance with the provisions of the clauses in Section B entitled, "Fixed Fee" and "Performance Fee." The amount of the Contractor's liability shall be calculated on a cumulative, per fiscal year basis. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor pursuant to the provisions of the Clauses identified above. In the event the Contractor's act or failure to act overlaps more than one period, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to (a)(1) through (3) above; and all costs in excess of the limitation of liability shall be borne by the Government.

H-37. Hazardous Materials

In implementation of the clause in Section I entitled, "Hazardous Material Identification and Material Safety Data," the Contractor shall obtain, review and maintain a Material Safety Data sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. The MSDS shall conform to the requirements of 29 CFR 1910.1200(g).

H-38. Nonprofit Contractor

- (a) With respect to only the clauses listed in (b) below, the term “nonprofit contractor” means:
 - (1) a university or other institution of higher education,
 - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) of the Internal Revenue Code,
 - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
 - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.
- (b)
 - (1) H-43 Limitation on Liability
 - (2) I-111 970.5204-21 Property, paragraph j

H-39. Definitions (Jan 2000)

“Contractor” as used in clause I.147 shall be defined as follows:

- (a) In all subsections of said clause except as set forth in (b) below, as:
 - (i) UT-Battelle, LLC, a Tennessee nonprofit limited liability company, and
 - (ii) The members of UT-Battelle, LLC, which are, inclusive, the University of Tennessee, a state university, and Battelle Memorial Institute, an Ohio nonprofit corporation
- (b) As to subsections (a) and (e) of said clause, Contractor shall be defined as UT-Battelle, LLC, a Tennessee nonprofit limited liability company.

H-40. Advance Understandings Regarding Additional Item of Allowable Costs

Imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP) are allowable, provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved in writing by the DOE Contracting Officer in accordance with applicable

procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose.

H-41. Spallation Neutron Source (Aug 2000)

The Contractor will support the Spallation Neutron Source Project in Oak Ridge, Tennessee, as outlined in the “Memorandum of Agreement Between the Spallation Neutron Source Project and Argonne National Laboratory, Brookhaven National Laboratory, Lawrence Berkeley National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, and Thomas Jefferson National Accelerator Facility (Revision 3) dated May 12, 2000,” (MOA) and any further revisions thereto (subject to the acceptance by the DOE Contracting Officer). The MOA, and any revisions thereto, is incorporated by reference into this contract. If any provisions of the MOA conflict with the terms of the contract, the terms of the contract will prevail.

H-42. Notice Regarding the Purchase of American-Made Equipment and Products—Sense of Congress

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

H-43. Lobbying Restriction (Department of Interior and Related Agencies Appropriations Act, 2005)

The contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-44. Transfer of the Inorganic Membrane Technology Program

Effective August 1, 2002, the Contractor will assume the programmatic responsibility for the Inorganic Membrane Technology Program. As part of that responsibility, the Contractor will also assume operation of the Inorganic Membrane Technology Laboratory (IMTL), which is located within a portion of Building K-1037 located at the East Tennessee Technology Park, while arrangements are made to move the IMTL to the Oak Ridge National Laboratory (ORNL).

- (a) The Contractor will be responsible for:

- (1) The containment and cleanup of new spills and/or releases caused by the Contractor's staff or their operations while occupying the IMTL on or after August 1, 2002; and,
 - (2) The minimization, characterization and certification of waste generated by the Contractor in its operations and management of the IMTL on or after August 1, 2002.
- (b) Building K-1037 has historically been used by DOE to support a variety of missions including but not limited to, Uranium Enrichment and Centrifuge Technology. The K-1037 Building is a vintage DOE facility that has pre-existing, historical conditions currently being considered for deactivation, decommissioning and decontamination by DOE. It is not the intent of this programmatic transfer that the Contractor assumes any responsibility for these pre-existing conditions, the deactivation, decommissioning and decontamination process, or environmental remediation and cleanup. Therefore, the Contractor will not be responsible for:
- (1) The reuse, deactivation and decommissioning, and environmental remediation cleanup of the IMTL, except as stated in paragraph (a)(1) above;
 - (2) The disposition of waste generated;
 - (3) Cleanup of new spills caused by other DOE prime contractors or their subcontractors at the IMTL;
 - (4) The reuse or disposition of Government property located in the IMTL and K-1037 that is loaned to the private sector; and
 - (5) The disposition of any legacy contamination in the IMTL. Legacy contamination is defined as contamination not introduced by Contractor's post August 1, 2002, activities.

H-45. Advance Understanding Regarding Special Hazards associated with Support of Nuclear and Other Threats Outside the United States

The parties recognize that the Contractor's support of DOE and/or other federal agency efforts to reduce threats from nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices, or missile technology located outside the United States may prove hazardous to contractor employees who volunteer for these assignments. When performing this work, contractor employees may be subject to special hazards which are not part of the employee's normal duties and for which workers' compensation laws, other statutes, the Contractor's welfare plan and policies, and other Contractor-provided insurance of the worker's private insurance may not

provide adequate financial protection to the work in the event of disability, or to the worker's estate in the event of death.

(a) Definitions

- (1) "Field Deployment Team" means that emergency-response team established by the Contractor at the request of DOE to be available, upon call by public authorities, through DOE, for immediate technical assistance and advice outside the United States involving detection, identification, assessment, characterization, packaging, control, containment, transport, dismantlement, movement or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices, or missile technology.
- (2) "Covered Assignment" means work which requires the active deployment outside the United States of a Contractor employee as a member of the Field Deployment Roster.
- (3) "Special Insurance Coverage" means Special (Additional) Travel Accident or similar special insurance coverage obtained by the Contractor, with the consent of DOE, to cover each Contractor employee member of the Field Deployment Roster for accidental death, dismemberment, and disability occurring directly or indirectly from said employee's participation in a covered Assignment, including but not limited to travel to and from the Covered Assignment.
- (4) "Field Deployment Roster" means the list provided at the time of deployment by the Contractor of employees who have volunteered to serve on, and have been accepted for a Covered Assignment.
- (5) "Contractor Benefit Plans Insurance" means insurance obtained and paid for by the Contractor for and on behalf of its employees. Such insurance includes Basic Life Insurance, Business Travel Accident Insurance, and, if applicable, the Special Insurance Coverage.

(b) Special Insurance Coverage

The Contractor may provide Field Deployment Roster employees with Special Insurance coverage, as an allowable cost under this Contract, in order to facilitate the provision of technical expertise to assist in the activities listed in (a)(1) above. The total amount of contractor Benefit Plans Insurance (including Special Insurance Coverage under this clause) provided to any Field Deployment Roster employee shall not exceed that employee's annual salary multiplied by 10.

- (c) In performing the work covered by this clause, the Contractor shall use only contractor employees who volunteer for this work assignment. The Contractor will thoroughly explain the risks of this work assignment to potential Contractor employee volunteers prior to accepting these volunteers for this work.
- (d) The Contractor will provide the Field Deployment Roster to the Contracting Officer in writing prior to beginning work which may be covered by this clause.
- (e) The Contractor shall not include the provisions of this clause in its subcontracts without first consulting with and receiving advance written approval from the Contracting Officer.
- (f) Special Incentives, Allowances and Payments
 1. Post Hardship Differential is authorized for Field Deployment Team members serving on such covered assignments in accordance with Department of State Standardized Regulations (DSSR), section 510. Post Hardship Differential is paid to Field Deployment Team members on temporary detail to one or more hardship posts after the forty-second calendar day of the Covered Assignment. Field Deployment Team members, who serve in Afghanistan, Iraq or other countries if approved by the Contracting Officer, may be granted Post Hardship Differential at the prescribed rate beginning on the forty-third day back to day one.
 2. Danger Pay Allowance is authorized for Field Deployment Team members serving on such covered assignments in accordance with DSSR, section 650. Danger Pay Allowance is in addition to Post Hardship Differential.
 3. Post Hardship Differential and Danger Pay Allowances are limited to a maximum of seventy-two working days per individual, per deployment, unless the Contracting Officer or Contracting Officer's Representative authorizes an extension of these benefits on a case-by-case basis due to critical mission needs.
 4. Field Deployment Team members will not be eligible for additional incentive payments, such as an Incentivized Performance Award (IPA), Significant Event Award (SEA) or Supplemental Performance Award (SPA), for their participation or activities in a Covered Assignment for which special payments or incentives under this policy were paid.
 5. An exception to Section 3.2.4 Other Pay Provisions of Appendix A- Personnel Costs and Related Expenses is hereby granted to permit the payment of overtime to exempt employees. The payment will be made at the Field Deployment Team member's straight-time rate for all working hours over

forty in a workweek in a Covered Assignment up to a maximum of seventy-two days. The Contracting Officer or Contracting Officer's Representative may authorize an extension of overtime benefits in extenuating circumstances.

6. The overtime payment will be authorized and paid following the Field Deployment Team member's return to ORNL.
7. ORNL standard policy, such as Travel Pay and Work on a Holiday, shall govern the payment of all other benefits and compensation.

H-46. Other Patent Related Matters

(a) **Contractor's Commitment**

For the Contractor's privately-funded technology transfer (PFTT) effort during the 5-year option term of this Contract, the Contractor shall commit to at least \$3,500,000 of private monies for expenses including those related to patenting, marketing, licensing, and development of Subject Inventions and shall file a minimum of twenty-five (25) patent applications during the 5-year option period and prior to the contract expiration date of March 31, 2010. Included as a part of the \$3,500,000 private monies commitment and the 25 patent application commitment, the Contractor further agrees to the following minimum commitments for the first two PFTT Time Periods:

PFTT Time Period 1 (March 31, 2005- September 30, 2006)	\$500,000 plus carryover from previous Contract year and three (3) patent applications
PFTT Time Period 2 (October 1, 2006- September 30, 2007)	\$500,000 and five (5) patent applications

At the end of PFTT Time Period 2, the Government will review annual reports submitted by the Contractor in accordance with subsection (c)(4) of this clause and determine if metrics should be prescribed for the remainder of the Contract or if the remaining commitments may be fulfilled at the discretion of the Contractor.

(b) **Transfer of Patent Rights to a Successor Contractor**

As consideration for the Contractor's Commitment defined in paragraph (a) of this clause, the Parties agree that at the termination or expiration of this Contract, the following terms and conditions shall apply to Subject Inventions which were elected to be pursued under the Contractor's PFTT program, and to the licenses and royalties generated therefrom:

- (1) In the event Contractor has executed a license, assignment or other commercialization agreement to a Subject Invention prior to termination or expiration of this Contract in which royalties, fees, equity or other consideration is to be or has been paid (hereinafter “agreement”), the distribution of net income from royalties, equity, or any other consideration received or to be received under such agreement shall remain as prior to Contract termination or expiration and shall continue for the duration of such agreement. As set forth in paragraph (e) below, fifty-one percent (51%) of such net income shall go to the Successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a Successor Contractor, to such other entity designated by the Government, and forty-nine percent (49%) may be retained by the Contractor for use in accordance with 35 USC Section 200 et seq. Administration of agreements related to such Subject Invention, shall remain with the Contractor. Title to such Subject Invention shall remain with the Contractor provided the Contractor has fulfilled the commitments set forth in paragraph (a) above. If the Contractor has not fulfilled the commitments set forth in paragraph (a) above, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or such other entity designated by the Government.
- (2) In the event Contractor has not executed an agreement (as defined in paragraph (1) above) to a Subject Invention, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or to such other entity designated by the Government, unless Contractor can demonstrate that it has expended at least twenty thousand dollars (\$20,000) of private monies in its PFTT program toward the patenting, licensing, marketing and/or development of such Subject Invention, and the Contractor has fulfilled the commitments set forth in paragraph (a) above. In the event Contractor retains title to a Subject Invention under this paragraph, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.
- (3) In the event Contractor retains title to Subject Inventions under paragraphs (1) or (2) above, and executes an agreement (as defined in paragraph (1) above) to such Subject Inventions after the termination or expiration of this Contract the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.
- (4) The Contractor and the Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to Subject Inventions. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, DOE’s need for continued operation of the

Facility, potential commercial use, assumption of patent related liabilities, effective technology transfer, and the need to market the technology. Such negotiations shall not change the disposition of title provided for in paragraphs (1) and (2) above unless mutually agreed by the Contractor and the Government.

- (5) For any Subject Invention to which the Contractor maintains title or administration of an agreement under paragraphs (a)(1)-(2) above, the Contractor agrees that, to the extent it is able to do so in view of prior licenses or assignments, it will negotiate in good faith to enable the Successor Contractor to practice such subject invention in the form of CRADAs, Work For Others agreements, licenses or other appropriate agreements, in order to fulfill the missions and programs of the Facility. It is the intention of the Contractor to enable the Successor Contractor to continue operation of the Facility, including the Facility's technology transfer program. In any event, the Successor Contractor retains the nonexclusive royalty-free right to practice the Subject Invention on behalf of the U.S. Government.
- (6) The provisions of paragraph (a)(1), (2), (3), and (5) above survive expiration or termination of the Contract.

(c) Costs

- (1) Except as otherwise specified in the clause of this Contract entitled, "Technology Transfer Mission," as allowable costs for conducting activities pursuant to provisions of that clause, no costs are allowable as direct or indirect costs for the preparation, filing, or prosecution of patent applications or the payment of maintenance fees, licensing, marketing and development costs after the Contractor elects to pursue commercialization of a Subject Invention under its PFTT program pursuant to paragraph (g) below.
- (2) If an extension of time for election of a Subject Invention for PFTT is approved in accordance with paragraph (g) below, Contractor shall reimburse all allowable costs incurred with respect to such Subject Invention during the time period of the extension. The Contractor shall also reimburse all patent costs which are incurred under the Contract for all Subject Inventions elected to be treated under PFTT regardless, of when such costs are incurred.
- (3) In the case of Contractor's PFTT program, the Contractor shall certify annually that all costs incurred, including, but not limited to, those for licensing, marketing, and development after the Contractor elects to treat a subject invention as PFTT have been and will be paid solely from the Contractor's PFTT program.

- (4) Within 90 days after the end of each Fiscal Year or at contract termination or expiration, the Contractor shall submit a report covering the previous PFTT Time Period which:
 - (i) lists the invention disclosures elected and/or patent applications filed under its PFTT program,
 - (ii) certifies the total amount of private monies it expended during the PFTT Time Period, including those expenses related to patenting, marketing, licensing and development of Subject Inventions as required by H-46 subsection (a), and
 - (iii) certifies the amount of gross income received from its PFTT program during the PFTT Time Period.

- (d) Liability of the Government
 - (1) All costs, including litigation costs, associated with and attributed to Contractor's privately funded technology transfer program are unallowable regardless of the stage of technology development or background intellectual property existing at the time the Subject Invention is chosen for management under the PFTT program, and notwithstanding the inclusion of publicly funded intellectual property in the Contractor's PFTT program activities.

 - (2) The Contractor shall not include in any license agreement or assignment any guarantee or requirement which would obligate the Government to pay any costs or create any liability on behalf of the Government.

 - (3) The Contractor shall include in all licensing agreements and in any assignment of title the following clauses unless otherwise approved or directed by the Contracting Officer following consultation with DOE Patent Counsel:
 - (i) "This agreement is entered into by UT-Battelle, LLC (UT-Battelle) in its private capacity. It is understood and agreed that the U.S. Government is not a party to this agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this agreement or the subject matter licensed assigned."

 - (ii) "Nothing in this Agreement shall be deemed to be a representation or warranty by UT-Battelle or the U.S. Government of the validity of any of the patents or the accuracy, safety, or usefulness for any purpose, of any TECHNICAL INFORMATION, techniques, or practices at any time made available by UT-Battelle. Neither the U.S. Government nor UT-Battelle nor any member company of UT-Battelle

shall have any liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from:

- (A) The production, use, or sale of any apparatus or product, or the practice of the INVENTIONS;
- (B) The use of any TECHNICAL INFORMATION, techniques, or practices disclosed by UT-Battelle; or
- (C) Any advertising or other promotional activities with respect to any of the foregoing, and LICENSEE shall hold the U.S. Government, UT-Battelle, and any member company of UT-Battelle harmless in the event the U.S. Government, UT-Battelle, or any member company of UT-Battelle is held liable.

UT-Battelle represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert."

(e) Distribution of net income

In the event the Contractor engages in a PFTT program under the clause of this Contract entitled, "Patent Rights – Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor" or the clause of this Contract entitled, "Rights in Data – Technology Transfer," such that private funds are utilized for technology transfer after the Contractor elects to pursue privately-funded commercialization of a Subject Invention or after the Contractor has received permission from the Contracting Officer to assert statutory copyright in a software program and received DOE approval to commercialize such software under its PFTT program under paragraph (i) below, net income from such PFTT program shall be distributed as follows:

- (1) Fifty-one percent (51%) of net income shall be used at the Facility for scientific research, development and education consistent with the research and development mission and objectives of the Facility. Forty-nine percent (49%) of such net income may be used by the Contractor at a location other than the Facility if such use is for scientific research, development, and education consistent with the research and development mission and objectives of the Facility in accordance with 35 USC Section 200 et seq.
- (2) "Net income" is defined as that amount remaining after the expense of patenting costs, licensing and marketing costs, payments to inventors, and other expenses incidental to the administration of subject inventions is deducted from gross income received.

(f) Equity Plan

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

- (1) the manner in which the Contractor shall acquire such equity in a third party, including the manner in which Contractor shall apportion capital contributions to such third party between the relative value of private Contractor contributions and the value of contributions representing a license under a Subject Invention;
 - (2) the manner in which the Contractor shall hold such equity, given that the Government has an undivided interest in that portion of such equity representing the value of contributions resulting from a license to such Subject Invention;
 - (3) the manner in which the Contractor shall dispose of such equity, giving due consideration to the potential for a conflict of interest between the interests of the Government and the Contractor; and
 - (4) the manner in which Contractor's inventors are compensated.
- (g) (1) The Contractor shall indicate whether a Subject Invention will be pursued under its government-funded technology transfer program or its PFTT program within six (6) months after the Subject Invention is reported to the Contractor, unless an extension is otherwise agreed in writing by the Patent Counsel. Subject Inventions reported to the Contractor on or after the effective date of the contract modification that incorporates this clause into Prime Contract No. DE-AC05-00OR22725 will be eligible for commercialization pursuant to the PFTT program
- (2) Notwithstanding paragraph (g)(1) above, DOE grants permission for the Contractor to elect the following Subject Inventions for commercialization in the PFTT program which were reported to the Contractor prior to the effective date of the contract modification that incorporates this clause into the Prime Contract No. DE-AC05-00OR22725 (March 15, 2004):

S-96,741

S-96,776

S-99,304

S-99,385

S-99,395

S-101,885

S-101,894

S-101,922

S-101,930

S-101,935

- (3) As consideration for DOE's granting permission to elect the Subject Inventions in paragraph (g)(2) above, the Contractor agrees that upon reaching net income on the entire PFTT portfolio, 61% of net income from these Subject Inventions shall be used at the Facility for scientific research, development and education consistent with the research and development mission and objectives of the Facility. Net income for all other inventions, as described in paragraph (g)(1) above, shall be distributed in accordance with paragraphs (b)(1) and (e)(1) above.
- (4) With respect to the Subject Inventions set forth in paragraph (g)(2) above, Contractor agrees to reimburse all allowable costs incurred with respect to each Subject Invention during the time period from six (6) months after disclosure to the Contractor until the effective date of the contract modification that incorporates this modified clause into Prime Contract No. DE-AC05-00OR22725. DOE agrees that the amount reimbursed will count toward PFTT Time Period 1 spending commitments.
- (h) In its PFTT program, the Contractor shall be substantially guided by the principles of U.S. Competitiveness and Fairness of Opportunity as set forth herein.
- (i) When requesting approval from DOE to assert statutory copyright in a particular software package pursuant to the clause entitled "Rights in Data—Technology Transfer" (Clause I-129(e) herein), Contractor may request that commercialization of such software proceed under the provisions of this Clause H-46. If approved, no costs of such commercialization thereafter shall be allowable, and the proceeds of such commercialization shall be treated in accordance with paragraph (a) above as if such proceeds had resulted from the commercialization of a Subject Invention. Upon termination or expiration of the Contract, such software will be treated as if such software were a Subject Invention elected under Contractor's PFTT program. Disposition of title to such

software will be governed by the provisions of paragraphs (b)(1)-(b)(5) above, except that the \$20,000 expenditure requirement for Subject Inventions set forth in paragraph (b)(2) is not applicable to such software.

- (j) Contractor's PFTT program shall be conducted so as to avoid interference with or adverse effects on Contractor's performance of other activities authorized by the Contract, including its government-funded technology transfer program.
- (k) The Contractor shall have procedures implementing its PFTT program. Such implementing procedures shall be provided to the Contracting Officer for review and approval within ninety (90) days after execution of the contract modification authorizing PFTT. The Contractor shall provide any proposed changes to such procedures to the Contracting Officer for review and approval prior to implementation. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures.
- (l) To the extent DOE unilaterally determines:
 - (1) the Laboratory's mission or function is being negatively impacted; or
 - (2) it provides the most effective technology transfer program,DOE retains the right to require all or certain portions of Contractor's PFTT program to be administered by a non-laboratory employee(s). Non-laboratory employees shall not utilize any Laboratory facilities without the prior written approval of the Contracting Officer.

H-47 Intellectual Property – BioEnergy Science Center

Notwithstanding the provisions set forth in Clause I.129, "Technology Transfer Mission," and Clause I.130, "Rights in Data-Technology Transfer," the following applies to subject inventions in the Core Technologies of the ORNL BioEnergy Science Center and for all technical data produced or acquired by the BESC:

- (a) Definitions.
 - (1) BESC Team Member means any industrial, university, or other entity, and their successors, receiving BESC funding as part of the ORNL BioEnergy Science Center.
 - (2) Core Technologies means:
 - (i) Formation of biomass with reduced recalcitrance;
 - (ii) New tools for biomass characterization; and
 - (iii) Microbial/enzymatic hydrolysis of lignocellulose.

(3) Intellectual Property Management Plan means the plan approved by DOE and executed by all BESC Team Members within 90 days of the modification that incorporates this clause into the Prime Contract DE-AC-00OR22725. The Intellectual Property Management Plan, to be attached as an Appendix to this Contract and made a part hereof, ensures and facilitates compliance with federal Intellectual Property law and policy, the public interest regarding dissemination of scientific reports and results, and the rapid transfer of technology for the development of cellulosic ethanol and other biofuels.

(b) Licensing and Disposition of Benefits.

(1) The Center will not enter into or be subject to any future licensing arrangements which provide a preferential license to any third party without prior approval by DOE.

(2) In accordance with the Intellectual Property Management Plan, the following disposition of revenue applies when cumulative royalties or other income earned by the Contractor (excluding equity until liquidated) exceed \$200,000 from all license agreements for any subject invention or group of related subject inventions in the Core Technologies:

After incidental expenses (such as patenting and licensing costs, but not payments to inventors) are deducted from any royalties or other income earned by the contractor with respect to subject inventions in the Core Technologies, sixty percent (60%) of the balance of any such royalties or other income or equity (above the \$200,000 threshold) will be utilized as determined by the Center for the support of scientific research or education to further the efforts of the Center and forty percent (40%) of the balance of such royalties, other income or equity will be distributed to the intellectual property owner(s), from which payments to inventors will be made.

(3) All revenue, regardless of amount, resulting from liquidation of equity in private for-profit companies to commercialize a Core Technology invention retained by the Contractor shall be subject to the 60/40 split as provided for in (2) above.

(4) The disposition of royalties or other income, including equity, set forth in (2) and (3), above, remains in effect so long as the BESC is in existence. If the BESC no longer exists prior to the end of the initial five-year period due to lack of DOE funding, or after the initial five-year period due to funding or other issues as determined by DOE, then the royalty and equity disposition of (2) and (3), above, is no longer applicable.

(5) The requirements set forth in this clause will be included in the IP Management Plan executed by all the BESC Team Members.

(6) Subject inventions in the Core Technologies made with Center funding are not entitled to election or commercialization under Contractor's privately funded technology transfer program.

(c) Ownership of Technical Data.

(1) Except for data qualifying as restricted computer software or limited rights data, the Contractor will include the following requirements in all subcontracts with BESC Team Members performing work as part of the Center:

(i) The Government shall have unlimited rights in all technical data first produced or acquired by the subcontractor. Contractor shall use the clause at 48 CFR 970.5227-1, "Rights in Data-Facilities (BESC Deviation)" in all subcontracts with BESC Team Members; and

(ii) All technical data first produced or acquired in the performance of work in the Center will be shared with BESC Team Members, other DOE Bioenergy Science Centers, and with any DOE advisory committee assisting DOE in the evaluation of the activities of the Center.

(2) Any deviations or modifications to such requirements will require written notice to and authorization of the DOE Contracting Officer.

(3) Within 90 days of the modification that incorporates this clause into the Prime Contract DE-AC-00OR22725, the Contractor will agree to establish a list of data first produced by the Center in the performance of this contract which will be released to the public.

(4) The Contractor will include the technical data publication requirement in paragraph (3) above in all subcontracts or other agreements with BESC Team Members performing work as part of the Center. Any deviation or modification of this requirement will require written notice to an authorization of the DOE Contracting Officer.

(d) Special Patent Rights Provisions for Certain Subcontractors Subject to 35 U.S.C. §200, et seq.:

For subcontracts in which the Contractor is a domestic small business or nonprofit organization as defined at (FAR) 48 CFR 27.301, Contractor shall replace paragraph (b) of 952.227-11 with alternate paragraph (b) as prescribed in 37 CFR 401.14(c) and with paragraph (2) modified by inserting at the beginning thereof, "Provided DOE has issued an exceptional circumstance in accordance with 37 CFR 401.3, . . . "