PART I—THE SCHEDULE

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SECTION H - SPECIAL CONTRACT REQUIREMENTS

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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. Jeffrey Wadsworth
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, and all other updates as required by Section I clause FAR 52.204-7, Central Contractor Registration, 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 (Dec 2009)

(a) The Contractor shall develop a contractor assurance system that is executed by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the Contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:

(1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.

(2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.

(3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.

(4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor‘s 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) 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 (if needed) that considers and mitigates risks.

(10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

The initial contractor assurance system description shall be approved by the Contracting Officer.

(b) The Government may revise its level and/or mix of oversight of this contract when the Contracting Officer determines that the assurance system is or is not operating effectively.

H-16 Implementation of FAR Subpart 39.1

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security

configurations available from the National Institute of Standards and Technology's website at http://checklists.nist.gov commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

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)

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.

(a) The Contractor shall use all reasonable efforts to perform operations and maintenance activities in the nuclear facilities.

(b) 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.

(c) 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.

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 Reserved

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) Appendix A and the clause in Section H entitled, *Application of Labor Policies and Practices* 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 l48 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 that 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 Addition and Alterations to Implement Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management and its Implementing Instructions

This contract involves contractor operation of Government-owned facilities and/or vehicles and the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or vehicles. Information on the requirements of the Executive Order and its Implementing Instructions may be found at http://ofee.gov/Executive Order/Executive Order13423_main.asp. This requirement includes the *Electronics Stewardship Requirements of Implementing Instruction XII*. When acquiring desktop or laptop computers and computer monitors, the Contractor shall acquire Electronic Product Environmental Assessment Tool registered products conforming to IEEE 1680-2006 Standard and ranked at least bronze, provided such products are life cycle cost efficient

and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

H-33 Performance Expectations (Modified)

Performance expectations encompassing Section C-4, Statement of Work (SOW), are mutually defined on an annual basis in the *Performance Evaluation and Measurement Plan* consistent with Section C-3, Performance Goals, Objectives, and Notable Outcomes.

H-34 Lobbying Restriction (Energy and Water Development and Related Agencies Appropriations Act, 2010)

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 Standards of Contractor Performance Evaluation

(a) Use of objective standards of performance, self-assessment and performance evaluation:

(1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of objective performance goals and indicators, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.

(2) The Parties agree to utilize the process described within Part III, Section J, Appendix G - ―Performance Evaluation and Measurement Plan" (PEMP) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix G will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

(3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the Contract Statement of Work and performance indicators identified within Part III, Section J, Appendix G. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.

(4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix G. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the DOE Oak Ridge National Laboratory Site Office Manager.

(5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Science, through the DOE Oak Ridge National Laboratory Site Office Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.

(6) The Contracting Officer shall annually provide a written assessment of the Laboratory‘s performance to the Contractor, which shall be based upon the process described in Appendix G. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor‘s final performance evaluation and rating. The Contractor‘s self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor‘s performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix G that is deemed to have an impact (either positive or negative) on the Contractor‘s performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE ―for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent – or no – review of the functional area.

Conversely, marginal performance or ―for cause” situations may result in more frequent reviews.

(b) Standards of performance measure review:

(1) The Parties agree to review the PEMP elements (goals, objectives, performance indicators, and expected levels of performance) contained in Appendix G annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, performance indicators, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing goals, objectives, performance indicators, and expected levels of performance. It is expected that the goals, objectives, performance indicators, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.

(2) Failure to include an objective or performance indicator in the contract Appendix G does not eliminate the Contractor‘s obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.

(3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance.

(c) DOE Quality Assurance Surveillance Plan

DOE‘s Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor‘s performance under the contract shall consist primarily of the PEMP as called for within the Part II, Section I (I.120 DEAR 970.5203-1). The QASP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations and acceptable quality levels for each task, describes how performance will be monitored and measured; describes how the results will be evaluated; and states how the results will affect contract payment.

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* (Mar 2002), 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 970.5245-1 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 that 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 Reserved

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) Section H Clause entitled, *Limitation on Liability.*

(2) Section I Clause entitled, *970.5245-1 Property*, paragraph j.

H-39 Definitions (Jan 2000)

―Contractor" as used in Section I Clause entitled, *Indemnification Under Public Law 85-804,* 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 accounted 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.

Training and Education costs described in subparagraphs (b)(1) and (b)(2) below that the Contractor incurs in complying with the requirements of paragraph C-4 (d), Mission-Related Partnerships, of the contract will not be unallowable due solely to non-compliance with the FAR cost principle at FAR 31.205-44 titled "Training and education costs." In order to be allowable, however, such Training and Education costs must comply with all other contract terms and conditions, including reasonableness, allocability, and the limitations of FAR Subpart 31.2.

(1) Notwithstanding the provisions of FAR cost principle 31.205-44(e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or

training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.

(2) Notwithstanding the provisions of FAR cost principle 31.205-44(e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs approved by the Contracting Officer for researchers and students who are not employed under this contract.

H-41 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-42 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-43 Reserved

H-44 Reserved

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 term of this Contract beginning on April 1, 2010, the Contractor shall commit to at least $1,750,000 of private monies for expenses including those related to patenting, marketing, licensing, and development of Subject Inventions during the 5-year period and prior to the contract expiration date of March 31, 2015. Inventions elected into PFTT program after April 1, 2005 and prior to March 31, 2010, including those inventions listed in Modification No. M158 (April 13, 2007), shall be governed by the terms of the Contractor‘s Prime Contract Number DE-AC05-00OR22725 in effect at that time.

(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 after March 31, 2010, and to the licenses and royalties generated therefrom:

(1) In the event the 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 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. Distribution of income to the Successor Contractor for use at the Facility pursuant to its contract (or to such other entity designated by the Government) shall be as set forth in paragraph (e) below. Administration of agreements and 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, administration of agreements and 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 (e) below.

(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 (e) below.

(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 (b)(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 performance 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 intent 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 (b)(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 that 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 Fiscal Year 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 Fiscal Year, including those expenses related to patenting, marketing, licensing and development of Subject Inventions as required by Section H entitled, *Other Patent Related Matters*, subsection (a); and

(iii) certifies the amount of gross income received from its PFTT program during the Fiscal Year.

(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 that 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 or 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 Adjusted Gross Income

For purposes of this clause ―Adjusted Gross Income" equals all revenue received by Contractor minus the inventor's share less any payments (royalties, fees, etc.) to third parties by virtue of license agreements or inter-institutional agreements with third parties (e.g., joint university or other collaboration with for-profit company) which obligates Contractor to share royalties with those third parties.

In the event the Contractor engages in a PFTT program under this clause such that private funds are utilized for technology transfer after the Contractor elects to pursue privately-funded commercialization of a Subject Invention elected after March 31, 2010 or after the Contractor has received permission from the Contracting Officer to assert statutory copyright in a software program after March 31, 2010 and received DOE approval to commercialize such software under its PFTT program under paragraph (i) below, Adjusted Gross Income from such PFTT program shall be distributed as follows:

(1) Basic Distribution
For annual Adjusted Gross Income less than one million dollars ($1 million), thirty percent (30%) of Adjusted Gross Income shall be returned and used at the Facility for scientific research, development and education consistent with the research and development objectives of the Facility. The remainder of such Adjusted Gross Income may be used as the Contractor deems appropriate consistent with 35 USC 200 *et seq*. The amount of Adjusted Gross Income to be returned and used at the Facility shall be calculated on an annual basis consistent with the Contractor's accepted accounting practices.

(2) Adjustment of Distribution
In the event the annual Adjusted Gross Income under the Contractor's privately funded technology program is in excess of one million dollars ($1 million) during any one year, the percentage of Adjusted Gross Income to be returned and used at the Facility for that year shall be as follows:

In excess of $1 million, up to $3 million	30% of Adjusted Gross Income up to $1 million; plus 25% of Adjusted

	Gross Income in excess of $1 million, up to $3 million
In excess of $3 million, up to $5 million	30% of Adjusted Gross Income up to $1 million; plus 25% of Adjusted Gross Income in excess of $1 million, up to $3 million; plus 20% of Adjusted Gross Income in excess of $3 million, up to $5 million
In excess of $5 million	30% of Adjusted Gross Income up to $1 million; plus 25% of Adjusted Gross Income in excess of $1 million, up to $3 million; plus 20% of Adjusted Gross Income in excess of $3 million, up to $5 million; plus 15% of Adjusted Gross Income in excess of $5 million

(3) The foregoing distribution shall also apply to equity interests received from third parties pursuant to paragraph (f).

(4) If this distribution of income structure is determined by the Parties to be detrimental to attracting investors and growing the laboratory‘s technology commercialization program, the Parties agree to negotiate a new structure more favorable to the investment community at the time such determination is made.

(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 parties. 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) The Contractor shall indicate whether a Subject Invention will be pursued under its government-funded technology transfer program or its PFTT program within nine (9) months after the Subject Invention is reported to the DOE, unless an extension is otherwise agreed in writing by the DOE Patent Counsel.

(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*, Contractor may request that commercialization of such software proceed under the provisions of Section H entitled, *Other Patent Related Matters*. 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 Section I Clauses entitled, *970.5227-3 Technology Transfer Mission*, and *970.5227-2 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-AC05-00OR22725. The Intellectual Property Management Plan, to be attached as Appendix I 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 that 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 created 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-AC05-00OR22725, 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 and 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, ..."

H-48 DOE ITER Project (Apr 2008)

(a) With respect to the DOE ITER Project, the Contractor will:

(1) Pursuant to direction from DOE in its role as the Domestic Agency head for the United States and in accordance with provisions of the Joint Implementation Agreement signed on November 21, 2006, as may be amended (hereinafter, ―ITER Agreement") and related documents, manage the U.S. contributions to the international ITER Project by establishing and managing the U.S. ITER Project Office at the Oak Ridge National Laboratory.

(2) Receive funding from DOE for U.S. ITER Project costs and manage these funds to meet U.S. obligations to the international ITER Project in accordance with the U.S. ITER Project Execution Plan and related/supporting documents.

(3) Perform work required by the *U.S. ITER Project Execution Plan* and approved project baseline.

(4) Execute necessary documents on behalf of the Domestic Agency that are consistent with the approved project baseline and needed for the day-to-day management of the project.

(b) Reserved

(c) Intellectual Property - In order to implement the international ITER Agreement Annex on Information and Intellectual Property, Contractor agrees that:

(1) It is subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement) with regard to work on the ITER project. Specifically, and without limitation, subject inventions and data produced in the performance of this contract and subcontracts related to the ITER Project are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property (the Annex) attached as Appendix H of this contract.

(2) Background intellectual property of the Contractor, as defined in the Annex, is also subject to the provisions of the ITER Agreement. In particular and under certain circumstances, Contractor shall use its best efforts to identify Background Intellectual Property (including patents and data) and grant a nonexclusive license in certain Background Intellectual Property to the Parties to the ITER Agreement (Members) for commercial fusion use. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE.

(3) In accordance with the Annex, intellectual property generated by Contractor employees who are designated as seconded staff to the ITER Organization shall be owned by the ITER Organization and the Contractor gets no rights to such intellectual property except those rights provided the Contractor by the Government as a result of the Government being a member of the ITER Organization. Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate secondment agreement with the ITER Organization.

(4) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract. Contractor will deliver to DOE, at a minimum, copies of all ITER-related peer-reviewed manuscripts provided to scientific and technical journal publishers, which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliance with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.

(5) It will include the ITER patent and data rights clauses transmitted to the Contractor from the U.S. ITER Project Office, suitably modified to identify the parties, in all subcontracts related to ITER, at any tier, for experimental, developmental, demonstration or research work and in subcontracts in which technical data or computer software is expected to be produced or in subcontracts that contain a requirement for production or delivery of data.

(d) Foreign assignments, in support of the ITER Project, are governed by the U.S. ITER Long-Term Foreign Assignment Relocation Policy. The Policy was approved by DOE to provide an equitable and uniform approach to the long-term (greater than one year) foreign assignment of personnel in support of the ITER Project.

(e) DOE has developed a set of human resource tools (R&R Toolbox) to facilitate the recruitment and retention of critical skills for major projects. The ITER project has been approved to utilize this toolbox for the recruitment and retention of personnel. (See Appendix A)

H-49 Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification under Public Law 85-804

a. The term ―a risk defined in this contract as unusually hazardous or nuclear” as used in FAR Clause 52.250-1 means the risk of legal liability to third parties (including legal costs as defined in paragraph jj. of Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2014jj., notwithstanding the fact that the claim or suit may not arise under section 170 of said Act) arising from actions or inactions in the course of the following performed by the Contractor under this contract:

(1) Participation in the following nonproliferation endeavors —

The high priority national security work provided by the Contractor involving highly specialized technical services on behalf of the Department of Energy in support of a joint U.S.-Russian plutonium disposition program. This work by the Contractor which may take place inside or outside the United States, involves the development of safe facilities and processes for the formulation, fabrication, packaging and transportation, management, storage, use, and disposal of plutonium oxide and mixed plutonium oxide nuclear reactor fuel (hereinafter ―MOX fuel” refers to both forms of fuel) and spent MOX fuel, in a nonproliferation effort on behalf of the United States.

(2) Activities on behalf of the Department of Energy involving weapons usable materials in a nonproliferation effort on behalf of the United States, outside the United States, as described in (i) through (iv):

(i) The Department of Energy‘s transparency monitoring activities in Russia under the U.S.-Russian Agreement Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons dated January 18, 1993; and any extension or modification thereof;

(ii) Inspection, packaging, transportation, and storage of weapons usable nuclear materials located in the Former Soviet Union, including Russia, provided that the work has been directed by the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary;

(iii) Participation in the Department of Energy‘s nuclear materials protection and accountability programs in Russia, Ukraine, Kazakhstan, and Belarus, including developing such systems and consulting and training individuals, or international inspectors on such systems under the:

Agreement between the Department of Energy of the United States of America and the Federal Nuclear and Radiation Safety

Authority of the Russian Federation to Cooperate on National Protection, Control, and Accounting of Nuclear Materials dated 2 October 1999;

Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan concerning Control, Accounting, and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation dated 13 December 1993;

Agreement between the Department of Defense of the United States of America and the Ukrainian State Committee on Nuclear and Radiation Safety concerning Development of State Systems of Control, Accounting, and Physical Protection of Nuclear Materials to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine dated 18 December 1993;

Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus concerning Control, Accounting, and Physical Protection of Nuclear Materials to Promote the Prevention of Nuclear Weapons Proliferation dated 23 June 1995;

Joint Statement by the Secretary of Department of Energy of the United States of America and the Minister of the Russian Federation for Atomic Energy on Control, Accounting, and Physical Protection of Nuclear Materials dated 30 January 1996; and

Joint Statement by the Secretary of Department of Energy of the United States of America and the Minister of the Russian Federation for Atomic Energy on Protection, Control, Accounting of Nuclear Materials dated 30 June 1995;

(iv) Agreement between the United States of America and the Government of the Russian Federation on the Exchange of Technical Information in the Field of Nuclear Warhead Safety and Security dated 16 December 1994. This Agreement referred to as WSSX is the Agreement under which DOE/NN-42's Russian Lab-to-Lab Warhead Dismantlement Transparency Program is proceeding; and

(3) Other United States-sponsored activities outside the United States, as requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary and

provided that the request or approval specifically makes the indemnity provided by this clause applicable thereto, involving:

(i) Transparency monitoring activities;

(ii) Inspection, packaging, transportation, and storage of weapons-usable nuclear materials;

(iii) Nuclear materials protection, control and accountability programs known as the Material Protection Control and Accounting Systems;

(iv) Other nonproliferation work relating to weapons-usable nuclear materials and materials of mass destruction; and

(v) Design, construction, and operation of facilities to manufacture, use, or dispose of MOX fuel or plutonium in the Russian Federation, other than the work identified in (1) above.

(4) Assistance to the Department of Energy‘s Russian Research Reactor Fuel Return (RRRFR) Program to repatriate Russian-origin highly enriched uranium (HEU) nuclear materials from research reactors outside of the United States. Assistance includes project planning, project management, technical support, and contracting for –

(i) the preparation, loading, and transportation of HEU nuclear materials and spent nuclear fuel from Belarus, Bulgaria, the Czech Republic, the Democratic People‘s Republic of Korea, Germany, Hungary, Kazakhstan, Latvia, Libya, Poland, Romania, Serbia, Ukraine, Uzbekistan, and Vietnam to the Russian Federation, and

(ii) the processing, conditioning, and storage of HEU nuclear materials, spent nuclear fuel, and associated waste streams within the Russian Federation.

(5) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary, or an Under Secretary, non-proliferation, emergency response, antiterrorism and similar critical national security activities involving the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices; provided that the activity relates to materials that are weapon usable or otherwise have the potential for mass destruction and further

provided that the request or approval specifically makes the indemnity provided by the clause applicable to that particular activity.

(6) Participation in tasks or activities by UT-Battelle or its subcontractors on or after March 11, 2011 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration as an element of activities taken in response to the Japanese earthquake and tsunami, including efforts to address and assess damage to nuclear power plants and potential radioactive releases from these plants now and in the future.

b. The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price-Anderson Act (section 170d. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210d.) or where the indemnification provided by the Price-Anderson Act is limited by the restriction on public liability imposed by section 170e. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210e.) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the contractor is exposed."

H-50 Special Provisions Relating to Work Funded Under American Recovery and Reinvestment Act (ARRA) of 2009 (Apr 2009)

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The

Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the Contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

Definitions:

For purposes of this clause, ―Covered Funds" means funds expended or obligated from appropriations under the *American Recovery and Reinvestment Act of 2009*, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

―Non-Federal Employer" means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

(a) Flow Down Provision

This clause must be included in every first-tier subcontract.

(b) Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

Note: For contractors currently using drawdown on a letter of credit, the current procedure remains in effect and is used for Recovery Act activity in lieu of invoicing.

(c) Prohibition on Use of Funds

None of the funds provided under this agreement derived from the *American Recovery and Reinvestment Act of 2009*, Pub. L. 111-5 may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

(d) Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the *American Recovery and Reinvestment Act of 2009*, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in *Reorganization Plan* Numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and Section 3145 of *Title 40 United States Code*. See http://www.dol.gov/esa/whd/contracts/dbra.htm.

(e) Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

(f) Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

(g) Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

H-51 Modification Definitization of Recovery Act Work (Apr 2009)

(a) The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive modification for the Recovery Act work directed under this modification. The Contractor agrees to submit a technical, cost, and fee proposal (if necessary) in accordance with the instructions contained in the Contracting Officer's request for proposal.

(b) The schedule for definitizing this modification is as follows:

Action	Date
Contractor submits technical, cost, and fee Proposal	30 days after effective date of this modification or as otherwise directed
Commence negotiations	150 days after effective date of this modification
Mutual agreement on definitization of Recovery Act work	175 days after effective date of this modification
Contractor submits certificate of current cost or pricing data	175 days after effective date of this modification
Execute definitization contract modification	180 days after effective date of this modification

(c) If agreement on a definitive modification is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable cost and/or fee in accordance with Subpart 15.4 and Part 31 of the FAR and DEAR 970.1504-1-1, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the ―Obligation of Funds" clause in this contract.

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