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## PART I—THE SCHEDULE

### SECTION H—SPECIAL CONTRACT REQUIREMENTS

#### H-1. Technical Direction

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
  - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications, or technical portions of the work description.
  - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government under the contract.
  - (4) Directions to the Contractor which suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition or hazard 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 make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
  - (2) Constitutes a change as defined in the contract clause entitled, "Changes;"
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

- (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within his authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract;
  - (2) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter not to perform under the direction and cancel the direction; or
  - (3) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes—Alternate I."

## **H-2. 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-3. 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-4. 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-5. Service Contract Act**

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 22.1005 or FAR 22.1006, with such modifications as appropriate to reflect the contractor/subcontractor relationship.

## **H-6. 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.

## **H-7. Costs Associated With Whistleblower Actions**

- (a) Litigation costs include legal services, whether performed by in house or outside counsel; administrative, technical and clerical services; costs of services of consultants and experts retained by the Contractor to assist it in the investigation and/or defense action pursuant to 10 CFR Part 708, but exclude the costs of settlements and judgments.
- (b) Subsequent to an adverse determination, all litigation costs incurred in the investigation and/or defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief which may be granted, may not be paid from the advance funding provided pursuant to this Contract, whether that funding be in the form of a special bank account or a payments cleared financing arrangement. Notwithstanding the foregoing, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Contractor is not liable for any retaliatory acts. The allowance of such costs, notwithstanding any other provision of the Contract, will be determined in accordance with this clause.
- (c) Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the Contract. Costs incurred in pursuit of mediation or other form of alternative dispute resolution are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the Contract. Additionally, the

Contracting Officer may, in appropriate circumstances, reimburse the Contractor for litigation costs and costs of judgments and/or settlements which in the aggregate, do not exceed up to the amount of the prior settlement offer approved by the Contracting Officer and rejected by the employee.

- (d) Except as provided in (c) above and (e) and (f) below, any other costs associated with an employee action, including litigation costs connected with a judgment resulting from or settlement subsequent to, an employee action, are not allowable unless the Contractor receives a judgment or final determination favorable to the Contractor. In such event, reasonable litigation costs incurred by the Contractor are allowable and the Contractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.
- (e) Costs incurred by the Contractor as a result of an employee action for retaliatory acts that resulted from compliance with either:
  - (1) Specific terms and conditions of the Contract, or
  - (2) Written instructions from the Contracting Officer shall be allowable.
- (f) Reasonable litigation costs and settlement costs incurred by, and judgments entered by, the Office of Hearings and Appeals against the Contractor as a result of an employee action for retaliation under 10 CFR Part 708 are allowable.
- (g) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under Section 2 of the Major Fraud Act of 1988.

#### **H-8. 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-9. 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-10. 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-11. 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.

M055  
05/29/2002

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

#### **H-12. Permits, Applications, Licenses, and Other Regulatory Documents**

- (a) Consistent with the clause in Section I entitled, “Permits or Licenses” (DEAR 970.5204-29), the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting pertinent activities at ORNL. 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) 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-13. 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 NOV's/NOAV's and fines and penalties.

#### **H-14. Allocation of Responsibilities for Contractor Environmental Compliance Activities**

- (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 (e)(12) of the clauses in Section I entitled, "Allowable Costs and Fee (Management and Operating Contracts)" and "Pre-Existing Conditions."

#### **H-15. Representations, Certifications and Other Statements of the Offeror**

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

## **H-16. 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-17. Financial Management System**

The Contractor shall maintain and administer a financial management system that includes the currently existing integrated accounting system and: (1) is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures, costs, and encumbrances; (2) permits the preparation of accounts and accurate, reliable financial and statistical reports; and (3) assures that accountability for the assets can be maintained. The Contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for written approval before implementation.

## **H-18. Integrated Accounting**

Integrated accounting procedures are required for use under this contract. The Contractor=s financial management system shall include an integrated accounting system that is linked to DOE=s accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department=s primary accounting system for reporting financial activity under this contract in accordance with requirements imposed by the Contracting Officer pursuant to the clause in Section I entitled, “Laws, Regulations, and DOE Directives” or as otherwise directed by the Contracting Officer. The Contractor=s financial management system shall include an integrated accounting system for product cost accounting, particularly for isotopes.

## H-19. 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-20. Privacy Act Systems of Record

- (a) The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function to which the requirements of the Privacy Act, 5 U.S.C. 552(a) and implementing DOE Regulations (10 CFR 1008), are deemed applicable:

| <b>DOE<br/>System No.</b> | <b>Title</b>   |
|---------------------------|--|
| 5                         | Personnel Records of Former Contractor Employees                     |
| 11                        | Emergency Locator Records  |
| 14                        | Report of Compensation   |
| 15                        | Payroll and Pay—Related Data for Employees of Terminated Contractors |
| 25                        | Employee Parking Records   |
| 26                        | Official Travel Records  |
| 27                        | Foreign Travel Records   |
| 28                        | General Training Records   |
| 29                        | Technology Training Program—Skill Training at Technician Level       |
| 31                        | Firearms Qualification Records                                       |
| 33                        | Personnel Medical Records  |
| 35                        | Personnel Radiation Exposure Records                                 |
| 38                        | Occupational and Industrial Accident Records                         |
| 40                        | Contractor Employees Insurance Claims                                |
| 43                        | Personnel Security Clearance Files                                   |
| 48                        | Security Education and/or Infraction Reports                         |
| 51                        | Employee and Visitor Access Control Records                          |
| 54                        | Investigative Files of Inspector General                             |
| 55                        | Freedom of Information and Privacy Act Requests Records              |
| 56                        | Congressional Constituent Inquiries                                  |
| 58                        | General Correspondence Files   |
| 59                        | Mailing Lists for Requesters of Energy-Related Information           |
| 71                        | The Radiation Accident Registry                                      |
| 72                        | The Department of Energy Radiation Study Registry                    |
| 73                        | The US-DPTA Registry   |
| 88                        | Epidemiologic and Other Health Studies, Surveys and Surveillances    |

The Contractor shall perform this requirement in accordance with the clause of this contract entitled, "Privacy Act." It is understood that compliance with the Privacy Act will require certain changes to the Contractor's current record keeping procedures. DOE and the Contractor agree that an employee whose employer changes from Lockheed Martin Energy Research Corporation to the Contractor, or vice-versa, shall not be considered a "Former Contractor Employee" under DOE System 5 above.

- (b) If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function, the Contracting Officer, or designee, shall so notify the Contractor in writing and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

#### **H-21. Liability with Respect to Cost Accounting Standards**

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses in Section I entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses in Section I entitled, "Cost Accounting Standards" and "Administration of Cost Accounting Standards," if: (1) the Contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and (2) the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

#### **H-22. 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-23. 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-24. 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-25. Nuclear Facility Safety**

- (a) The activities under this contract include the operation of nuclear facilities. 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.
- (b) The Contractor shall comply with all applicable regulations of DOE concerning nuclear safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear safety of which it is notified in writing by the Contracting Officer.
- (c) Prior to the initial startup of any nuclear facility under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the safety analysis reports or other hazards summary reports for that facility, the Contractor shall:
  - (1) Prepare a safety authorization basis document, such as a safety analysis report, designed to assure the safe operations and maintenance of the facility in accordance with applicable DOE regulations and directives. For nuclear reactors and other Category 1, 2, or 3 nuclear facilities, technical safety requirements shall also be provided.

- (2) Establish nuclear safety control procedures to be used within the Contractor's organization to assure competent independent review and internal approval of the safety analysis report and the detailed plans and procedures specified in (1) above.
  - (3) Submit safety authorization basis documents, technical safety requirements and/or operational safety requirements to the DOE for review and approval.
  - (4) Submit to the Contracting Officer for approval such procedures relating to nuclear safety as the Contracting Officer may designate.
  - (5) Carry out a program of initial training and periodic requalification designed to assure that all personnel who will be engaged in nuclear operations or maintenance understand the approved plans and procedures for nuclear safety and are qualified to perform their assigned functions.
  - (6) Perform operational readiness review or readiness assessments as required.
  - (7) Obtain the approval of the Contracting Officer prior to start-up of the facility.
- (d) In the operation and maintenance of any nuclear facility under this contract, the Contractor shall:
- (1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel, and except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified and authorized to evaluate any emergency condition and take prompt effective action with respect thereto.
  - (2) Operate the facility within the technical safety requirements or operational safety requirements which are approved by the Contracting Officer.
  - (3) Follow strictly the procedures relating to nuclear safety approved by the Contracting Officer in (c)(3) above, and submit to the Contracting Officer for his approval any proposed changes in such procedures.
  - (4) Establish an auditable, well-defined, internal safety review and inspection system approved by the Contracting Officer (including review and inspection reports by competent technical personnel) that will: (i) Provide frequent and periodic checks of facility performance and of the qualifications and training of operating and maintenance personnel, and (ii) provide for investigation of any unusual or unpredicted conditions that might affect safe operation.

- (5) Establish an unreviewed safety question determination process in accordance with applicable DOE regulations and directives.
- (6) Report promptly to the Contracting Officer any change in the physical condition of the facility or its operating characteristics that might, in the judgment of the Contractor, affect the safe operation of the facility or result in an unreviewed safety question.
- (7) Terminate operations at the facility immediately whenever so instructed by the Contracting Officer, or whenever, in the judgment of the Contractor, the risk of a nuclear incident endangering persons or property warrants such action.
- (8) Prepare, in cooperation with other services and facilities available, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons at the various work sites; participate as directed in the integration of the Contractor's, subcontractor's and DOE emergency plans with the responsible state and local government's emergency plans for protection of the public off-site; instruct personnel and subcontractors as to their participation in such plans and any personal risk to such personnel that may be involved; and participate, and assure subcontractor participation, in such practice exercises as may be desirable to assure the effectiveness of such planning. The Contractor shall submit its plan as part of the documentation for the Integrated Safety Management System (System) required by the Section I clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution."
- (9) At an appropriate time as determined by the Contracting Officer, prepare and submit to the Contracting Officer for his approval, shutdown, decommissioning, decontamination and property management plans leading to orderly and safe program disposition of the nuclear facility and any associated nuclear wastes or other hazardous material. The Contractor shall submit these plans as part of the documentation for the Integrated Safety Management System (System) required by the clause in Section I entitled, "Integration of Environment, Safety and Health into Work Planning and Execution."
- (10) In the event that the Contractor fails to comply with said standards and requirements of DOE, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

## **H-26. 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-27. Environmental Justice**

The Contractor shall embrace the principles of Environmental Justice by complying with all applicable environmental regulations and by focusing on nondiscrimination in its programs that affect human health and the environment. The Contractor shall comply with Executive Order 12898 on Environmental Justice and ORO's Environmental Justice Strategic Plan.

## **H-28 Patent Indemnity—Subcontracts**

Except as otherwise authorized by the Contracting Officer, the Contractor shall follow the procedures as prescribed in 48 CFR Sections 27.203-1, 27.203-2, 27.203-4, and 27.203-5 in obtaining indemnification of the Government and its officers, agents, and employees against liability for infringement of U. S. Letters patents from Contractor's subcontractors for any contract work subcontracted.

## **H-29. Assignment of Existing Agreements and Subcontracts**

- (a) Existing agreements and subcontracts entered into by the incumbent Contractor shall be assigned to the successor Contractor upon the effective date of assumption of full responsibility under this contract. The agreements and subcontracts shall include but not be limited to all subcontracts and purchase orders; Cooperative Research and Development Agreements (CRADA); licenses; agreements with domestic and foreign research organizations; agreements with universities and colleges; agreements with local and state governments; partnership agreements; user agreements; special financial institution account agreement; and other similar agreements.
- (b) The terms and conditions of these agreements and subcontracts, as they exist when assigned, shall remain in full force and effect unless modified by the Contractor and the agreement participant(s) or the Contractor and the subcontractor.

### **H-30. Work for Others Funding Authorization**

Any uncollectible receivables resulting from the Contractor utilizing Contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor therefore. The Contractor is permitted to provide advance payment utilizing Contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the clause in Section I entitled, "Laws, Regulations, and DOE Directives," and such advance cannot be obtained. The Contractor is also permitted to provide advance payment utilizing Contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the clause in Section I entitled, "Laws, Regulations, and DOE Directives," have elapsed. The Contractor=s utilization of Contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

### **H-31. Community Commitment**

It is the practice of the Department of Energy (DOE) to be a constructive partner in the geographic regions where it conducts business. The basic elements include: (1) recognizing the diverse interests of the region and its stakeholders; (2) engaging regional stakeholders in issues and concerns of mutual interest; and (3) recognizing that involvement in the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the contract will be consistent with the spirit and intent of the elements set forth above.

### **H-32. Corporate Citizenship**

- (a) The Contractor=s commitment to contributions to the community with respect to it and its employees involvement and financial investment in local area educational, cultural, civic, health and welfare organizations, etc., are specified below. Such contributions shall be made after the date of a contract award through the term of the contract (not including the option period).

*The Contractor's Corporate Citizenship Offer, dated August 2, 1999, is incorporated in the contract as Section J, Appendix G, Corporate Citizenship.*

- (b) The Contractor will provide to the Contracting Officer an annual report of accomplishments against the commitments specified in (a) above at the end of each fiscal year. The Contractor agrees that such reports may be made available to the public. The Contractor shall make available to DOE data that will validate the accomplishment of these commitments.

- (c) 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-33. Employee Transition**

- (a) The Contractor shall adhere to the following requirements in its human resources related actions and fully cooperate with other contractors, as necessary, in order to meet the following objectives: develop and implement an orderly employee transition; be fair to incumbent employees while maintaining a productive work force; and minimize the cost of transition and impacts to other DOE programs.
- (b) Transition of Employees
  - (1) For purposes of the employee transition provisions in this clause, the term "incumbent contractor" means Lockheed Martin Energy Research Corporation (LMER), performing ORNL work under the management and operating Contract No. DE-AC05-96OR22464. These provisions apply to individuals employed by the incumbent contractor on March 31, 2000, except for the Key Personnel identified in Section J, Appendix J, Key Personnel, to the incumbent contractor's contract. These provisions do not apply to subcontractors.
  - (2) At the time the Contractor becomes responsible for the work on April 1, 2000, all LMER employees, except for the key personnel of the incumbent contractor identified in (b) (1) above, will become employees of the Contractor.
  - (3) It is the Contractor's prerogative to establish its own management structure and team, with due consideration given to minimizing the layering of management and relocation of managers to this contract from its other operations. There is neither a requirement nor prohibition to hire the Key Personnel from the incumbent contractor. Any "sign-on" bonuses paid to incumbent contractor employees by the offerors, as an employment inducement, will not be reimbursed as an allowable cost under this contract.
- (c) Pay and Benefits. In order to minimize unnecessary disruption to the existing work force and minimize severance costs, incumbent contractor employees who transition to the Contractor will retain substantially equivalent base pay and employee benefits, to include company service credit and continued participation in the current Defined Benefit Pension Plan and companion retiree medical benefit.
- (d) Pension Plan. The Contractor will either make arrangements to participate in the Lockheed Martin Energy Systems (LMES) successor Defined Benefit Pension

Plan or establish a separate “mirror” plan to the LMES successor plan. The pension plan and all amendments proposed by the Contractor shall be subject to DOE approval. No credit shall be provided under such a plan for service while performing non-DOE work.

- (e) Severance Pay. No severance pay is warranted on the date incumbent employees transition to the Contractor since the transition occurs under substantially equivalent employment conditions. These employees will retain their severance pay benefit earned with the incumbent contractor and its predecessor contractors, plus any severance pay based on service with the Contractor, and will be paid applicable severance if an individual is ever subsequently involuntarily terminated (except for cause) by the Contractor. Prorated repayment of severance pay will be required should an individual be subsequently employed under substantially equivalent pay and benefits, based upon the length of time between separation and new hire date. Severance pay benefits are not an allowable cost at the end of the term of the contract if employees are employed by or receive an offer of employment with a replacement contractor where substantially equivalent base pay and benefits and credit for prior length of service are maintained.
- (f) Labor Relations.
  - (1) The Contractor will maintain positive labor-management relations on all sites where it performs work. The Contractor will respect the right of employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities.
  - (2) The Contractor will be responsible at the time of transition for performing substantially similar operations at ORNL as the incumbent contractor. The Contractor will, as a result of the employee transition process set out in (b) above, employ all of the incumbent contractor=s employees as defined in (b) above. Therefore, the Contractor shall initially consult with the Atomic Trades Labor Council (ATLC) regarding the initial terms and conditions of employment of those employees who had been represented by ATLC and shall be obligated to recognize and bargain with the ATLC as the collective bargaining representative for the non-construction work currently performed by the predecessor=s bargaining unit employees as a successor employer, consistent with the National Labor Relations Act.
  - (3) The Contractor will give due consideration to the existing Construction Labor Agreement between LMES=s Construction Manager subcontractor, MK-Ferguson of Oak Ridge Company (MK-F), and the Knoxville Building Trades Council (KBTC) for what has historically been

construction work performed by employees represented by the Building Trades on the Oak Ridge Reservation.

- (g) Employee Relations. The Contractor is expected to maintain a positive employee relations environment that will foster high productivity at reasonable cost. The Contractor shall implement an effective employee concerns resolution program.

#### **H-34. 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-35. Unclassified Controlled Nuclear Information/Export Controlled Information**

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

#### **H-36. Oak Ridge Operations Services**

Oak Ridge Operations is responsible for multiple, broad-based programs which are managed by multiple prime contractors. In order to provide a net benefit to the government, the Contractor may elect to provide services to and/or obtain services from other DOE prime contractors in the performance of their respective responsibilities. The government may also direct the Contractor to obtain or provide services to or from other DOE prime contractors when it is in the best interest of the government, including the

accomplishment of DOE responsibilities in which the capabilities of more than one contractor are required. When services are obtained under this provision, the Contractor shall maintain accountability and control of the work and shall execute agreements for the conduct of work with other prime contractors, as appropriate.

### **H-37. DOE/Contractor Coordinating Council**

As part of its responsibility as an Oak Ridge Operations (ORO) prime contractor, the Contractor shall participate in the DOE/Contractor Coordinating Council established by ORO. This Council provides a forum for coordination and cooperation among contractors in accomplishing strategic management objectives essential for ORO's management of multi-program/multi-site operations.

### **H-38. 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 ORNL. 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 ORNL 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-39. Work Authorization System**

- (a) The Contractor and DOE shall mutually establish an annual Cost Estimate consistent with the Statement of Work and the work breakdown structure specified by the Contracting Officer. The Annual Cost Estimate will be developed, in conjunction with customers, prior to the start of the fiscal year or as early in the fiscal year as possible. In addition, the annual Cost Estimate will be updated at least twice a year, prior to May 15<sup>th</sup> and prior to August 15<sup>th</sup> of each year. The updated estimate will reflect actual work authorized in addition to planning for the balance of the year. The Annual Cost Estimate will be incorporated into Section J, Appendix D, of the contract.
- (b) DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed, issued, and revised in accordance with DOE requirements.

- (c) Order of precedence. This clause is of lesser order of precedence than the contract clauses in Section I entitled, “Allowable Costs and Fee,” “Obligation of Funds,” and “Payments and Advances.”
- (d) Notwithstanding the other provisions of this clause, the Contractor has, in the event of an emergency, authority to take corrective actions necessary to operate in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated, and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraphs (a) and (b) of the this clause.

#### **H-40. Performance Expectations**

Performance expectations encompassing Section C.2, Statement of Work (SOW), are categorized in the following six areas:

- (a) *Science and Technology*—Science and technology expectations placed on the Contractor emphasize quality of research conducted and accomplishments in developing leading edge enabling technologies to support the DOE mission;
- (b) *Leadership*—The Contractor is expected to provide leadership that ensures excellence, relevance, and stewardship in all Laboratory operations;
- (c) *Environment, Safety, and Health (ES&H)*—The Contractor will integrate ES&H into research, operations, and management practices ensuring protection of the environment and protection of the workforce and public;
- (d) *Infrastructure*—The Contractor will maintain the infrastructure required to support operations of aging facilities in a safe, reliable, environmentally responsible, and cost effective manner;
- (e) *Business Operations*—The Contractor will use efficient and effective corporate management systems and approaches to guide decision making, streamline and improve operations, align resources and reduce costs, and improve the delivery of products and services; and
- (f) *Stakeholder Relations*—The Contractor will work with customers, stakeholders, and neighbors in an open, frank, and constructive manner.

Performance objectives will be used as a means for evaluating and improving Contractor performance. Prior to the beginning of each fiscal year (or prior to April 1, 2000 for the first six months) under this contract, performance objectives to be applied to each expectation and the method in which the performance objectives will be evaluated will be

established in accordance with the clause in Section I entitled, “Total Available Fee: Base Fee Amount and Performance Fee.” Examples of objectives include achieving maximum benefits from re-engineering efforts (e.g., success in cost effective management through streamlining efforts and subcontracting functions that are service oriented) and optimizing application of DOE developed and licensed technologies. A number of elements will be evaluated in assessing the performance of the Contractor. A Performance Evaluation Plan shall be developed which will include the details related to the definition and evaluation of performance objectives.

#### **H-41. Lobbying Restrictions (Energy & Water Development Appropriations Act, 2000)**

M054  
05/02/2002

The Contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislative 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-42. Management System**

The contractor shall maintain and administer a management system which includes the existing integrated system (Systems Applications and Products in Data Processing [SAP]). Any deviation from this requirement is subject to the prior written approval of the Contracting Officer.

#### **H-43. Limitation on Liability**

If 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 970.5204-31, entitled, “Insurance-Litigation and Claims (Jun 1997),” 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 970.5204-21, entitled, “Property (Jun 1997),” paragraph (f)(1)(i)(C).
  - (3) Section H, Clause entitled, “Costs Associated with Whistleblower Actions.”
- (b) The Contractor shall be liable for an amount not to exceed 1.25 times the maximum fee available for each fiscal year in accordance with the provisions of

the clauses in Section B entitled, “Fixed Fee” and “Performance Fee.” The amount of the Contractor=s liability shall be calculated on a cumulative, per fiscal year basis. The annual cap which will apply shall be based on the fiscal year in which the Contractor=s act or failure to act was the proximate cause of the liability assumed by the Contractor pursuant to the provisions of the Clauses identified above. In the event the Contractor=s act or failure to act overlaps more than one period, the limitation will be the annual limitation for the last fiscal year in which the Contractor=s act or failure to act occurred. If the Contractor=s cumulative obligations equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to (a)(1) through (3) above; and all costs in excess of the limitation of liability shall be borne by the Government.

#### **H-44. Hazardous Materials**

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

#### **H-45. Nonprofit Contractor**

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

- (3) I-105 970.5204-13 Allowable Costs and Fee (Management and Operating Contracts) (Mar 1998) (Modified) (Deviation), paragraph (e)(36), (37), and (38)

#### **H-46. Definitions (Jan 2000)**

M007  
03/31/2000

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

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

#### **H-47. Travel Restrictions (Jan 2000)**

M026  
02/06/2001

- (a) For contractor travel expenses incurred on or after April 1, 2000, a ceiling limitation of \$3,300,000 shall apply to all reimbursements made for contractor travel expenses under this contract utilizing funds appropriated under the FY 2000 Energy and Water Development Appropriations Act. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the contracting officer.
- (b) Notwithstanding any other provisions of the contract, the contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred on or after April 1, 2000, and before October 1, 2000, which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. To the extent that this contract provides elsewhere for the reimbursement of employee travel costs which exceed the rates and amounts that apply to federal employees under subchapter 1 of Chapter 57 of Title 5, United States Code, the preceding limitation on reimbursement of employee travel costs applies to costs incurred on or after April 1, 2000, and before October 1, 2000. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- (c) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:

- (i) Federal Travel Regulations (FTR) for travel within the 48 states;
  - (ii) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
  - (iii) Standardized Regulations (SR) for travel allowances in foreign areas.
- (d) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.
- (e) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented.

#### **H-48. Spallation Neutron Source (Aug 2000)**

M014  
09/20/2000

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

#### **H-49. Notice Regarding the Purchase of American-Made Equipment and Products—Sense of Congress**

M026  
02/06/2001

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-50. Lobbying Restriction (Department of Interior and Related Agencies Appropriations Act, 2002)**

M054  
05/02/2002

The contractor agrees that none of the funds obligated on this with 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-51. Transfer of the Inorganic Membrane Technology Program**

M062  
07/31/2002

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

M072  
12/30/2002

(a) The Contractor will be responsible for:

- (1) The containment and cleanup of new spills and/or releases caused by the Contractor's staff or their operations while occupying the IMTL on or after August 1, 2002; and,
- (2) The minimization, characterization and certification of waste generated by the Contractor in its operations and management of the IMTL on or after August 1, 2002.

(b) Building K-1037 has historically been used by DOE to support a variety of missions including but not limited to, Uranium Enrichment and Centrifuge Technology. The K-1037 Building is a vintage DOE facility that has pre-existing, historical conditions currently being considered for deactivation, decommissioning and decontamination by DOE. It is not the intent of this programmatic transfer that the Contractor assumes any responsibility for these pre-existing conditions, the deactivation, decommissioning and decontamination process, or environmental remediation and cleanup. Therefore, the Contractor will not be responsible for:

- (1) The reuse, deactivation and decommissioning, and environmental remediation cleanup of the IMTL, except as stated in paragraph (a)(1) above;
- (2) The disposition of waste generated;
- (3) Cleanup of new spills caused by other DOE prime contractors or their subcontractors at the IMTL;

- (4) The reuse or disposition of Government property located in the IMTL and K-1037 that is loaned to the private sector; and
- (5) The disposition of any legacy contamination in the IMTL. Legacy contamination is defined as contamination not introduced by Contractor's post August 1, 2002, activities.

## **H-52. Advance Understanding Regarding Special Hazards Associated with Support of Nuclear and Other Threats Outside the United States**

M062  
07/31/2002

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.

### **H-53. Other Patent Related Matters**

M099  
03/17/2004

- (a) Transfer of Patent Rights to a Successor Contractor

As consideration for the Contractor’s commitment to expend private monies in its privately-funded technology transfer effort under this Contract, including at least two hundred fifty thousand dollars (\$250,000) per year for activities under the privately-funded technology transfer program which includes a combination of the filing of an average of three (3) patent applications per year during the period of this Contract, including expenses related to the patenting, marketing, licensing and development of Subject Inventions, 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 privately-funded technology transfer program, and to the licenses and royalties generated therefrom:

- (1) In the event Contractor has executed a license, assignment or other commercialization agreement to a Subject Invention prior to termination or

expiration of this Contract in which royalties, fees, equity or other consideration is to be or has been paid (hereinafter “agreement”), the distribution of net income from royalties, equity, or any other consideration received or to be received under such agreement shall remain as prior to Contract termination or expiration and shall continue for the duration of such agreement. As set forth in paragraph (d) below, fifty-one percent (51%) of such net income shall go to the Successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a Successor Contractor, to such other entity designated by the Government, and forty-nine percent (49%) may be retained by the Contractor for use in accordance with 35 USC Section 200 et seq. Administration of agreements related to such Subject Invention, shall remain with the Contractor. Title to such Subject Invention shall remain with the Contractor provided the Contractor has fulfilled the commitments set forth in paragraph (a) above. If the Contractor has not fulfilled the commitments set forth in paragraph (a) above, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or such other entity designated by the Government.

- (2) In the event Contractor has not executed an agreement (as defined in paragraph (1) above) to a Subject Invention, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or to such other entity designated by the Government, unless Contractor can demonstrate that it has expended at least twenty thousand dollars (\$20,000) of private monies in its privately-funded technology transfer program toward the patenting, licensing, marketing and/or development of such Subject Invention, and the Contractor has fulfilled the commitments set forth in paragraph (a) above. In the event Contractor retains title to a Subject Invention under this paragraph, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.
- (3) In the event Contractor retains title to Subject Inventions under paragraphs (1) or (2) above, and executes an agreement (as defined in paragraph (1) above) to such Subject Inventions after the termination or expiration of this Contract, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (1) above.
- (4) The Contractor and the Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to Subject Inventions. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, DOE's need for continued operation of the Facility, potential commercial use, assumption of patent related liabilities, effective technology transfer, and the need to market the technology. Such negotiations shall not change the disposition of title provided for in paragraphs (1) and (2) above unless mutually agreed by the Contractor and the Government.
- (5) For any Subject Invention to which the Contractor maintains title or administration of an agreement under paragraphs (a)(1)-(2) above, the Contractor

agrees that, to the extent it is able to do so in view of prior licenses or assignments, it will negotiate in good faith to enable the Successor Contractor to practice such subject invention in the form of CRADAs, Work For Others agreements, licenses or other appropriate agreements, in order to fulfill the missions and programs of the Facility. It is the intention of the Contractor to enable the Successor Contractor to continue operation of the Facility, including the Facility's technology transfer program. In any event, the Successor Contractor retains the nonexclusive royalty-free right to practice the Subject Invention on behalf of the U.S. Government.

- (6) The provisions of paragraph (a)(1), (2), (3), and (5) above survive expiration or termination of the Contract.

(b) 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 or licensing and marketing costs after the Contractor elects to pursue commercialization of a Subject Invention under its privately-funded technology transfer program pursuant to paragraph (f) below.
- (2) If an extension of time for election of a Subject Invention for privately-funded technology transfer is approved in accordance with paragraph (f) below, Contractor shall reimburse all allowable costs incurred with respect to such Subject Invention during the time period of the extension. The Contractor shall also reimburse all patent costs which are incurred under the Contract for all Subject Inventions elected to be treated under privately-funded technology transfer, regardless of when such costs are incurred.

(c) Liability of the Government

- (1) All costs, including litigation costs, associated with and attributed to Contractor's privately funded technology transfer program are unallowable.
- (2) The Contractor shall not include in any license agreement or assignment any guarantee or requirement which would obligate the Government to pay any costs or create any liability on behalf of the Government.
- (3) The Contractor shall include in all licensing agreements and in any assignment of title the following clauses unless otherwise approved or directed by the Contracting Officer following consultation with DOE Patent Counsel:
  - (i) "This agreement is entered into by UT-Battelle, LLC (UT-Battelle) in its private capacity. It is understood and agreed that the U.S. Government is not a

party to this agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this agreement or the subject matter licensed assigned)."

- (ii) "Nothing in this Agreement shall be deemed to be a representation or warranty by UT-Battelle or the U.S. Government of the validity of any of the patents or the accuracy, safety, or usefulness for any purpose, of any TECHNICAL INFORMATION, techniques, or practices at any time made available by UT-Battelle. Neither the U.S. Government nor UT-Battelle nor any member company of UT-Battelle shall have any liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from:
  - (A) The production, use, or sale of any apparatus or product, or the practice of the INVENTIONS;
  - (B) The use of any TECHNICAL INFORMATION, techniques, or practices disclosed by UT-Battelle; or
  - (C) Any advertising or other promotional activities with respect to any of the foregoing, and LICENSEE shall hold the U.S. Government, UT-Battelle, and any member company of UT-Battelle harmless in the event the U.S. Government, UT-Battelle, or any member company of UT-Battelle is held liable.

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

(d) Distribution of net income

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

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

(e) Equity Plan

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

- (1) the manner in which the Contractor shall acquire such equity in a third party, including the manner in which Contractor shall apportion capital contributions to such third party between the relative value of private Contractor contributions and the value of contributions representing a license under a Subject Invention;
  - (2) the manner in which the Contractor shall hold such equity, given that the Government has an undivided 51% 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.
- (f) The Contractor shall indicate whether a Subject Invention will be pursued under its government-funded technology transfer program or its privately-funded technology transfer program within six (6) months after the Subject Invention is reported to the Contractor, unless an extension is otherwise agreed in writing by the Patent Counsel. Subject Inventions reported to the Contractor on or after the effective date of the contract modification that incorporates this clause into Prime Contract No. DE-AC05-

00OR22725 will be eligible for commercialization pursuant to the privately-funded technology transfer program.

- (g) In its privately-funded technology transfer program, the Contractor shall be substantially guided by the principles of U.S. Competitiveness and Fairness of Opportunity as set forth herein.
- (h) When requesting approval from DOE to assert statutory copyright in a particular software package pursuant to the clause entitled “Rights in Data—Technology Transfer” (Clause I-93(e) herein), Contractor may request that commercialization of such software proceed under the provisions of this Clause H-53. 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 privately-funded technology transfer program. Disposition of title to such software will be governed by the provisions of paragraphs (a)(1)-(a)(5) above, except that the \$20,000 expenditure requirement for Subject Inventions set forth in paragraph (a)(2) is not applicable to such software.
- (i) Contractor’s privately-funded technology transfer 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.
- (j) The Contractor shall have procedures implementing its privately-funded technology transfer 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 privately-funded technology transfer. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures.
- (k) To the extent it provides the most effective technology transfer program, DOE retains the right to require certain portions of Contractor’s privately-funded technology transfer program to be administered by a non-laboratory employee(s).