S-85603

FORM PTO-1619A
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RECORDATION FORM COVER SHEET
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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- [x] New
- [ ] Resubmission (Non-Recordation) Document ID#
- [ ] Correction of PTO Error Reel # Frame #
- [ ] Corrective Document Reel # Frame #

Conveyance Type

- [ ] Assignment
- [ ] Security Agreement
- [ ] License
- [ ] Change of Name
- [ ] Merger
- [x] Other: Confirmatory License

U.S. Government
(For Use ONLY by U.S. Government Agencies)
- [x] Departmental File
- [ ] Secret File

Conveying Party(ies)

- [ ] Mark if additional names of conveying parties attached

Name (line 1): California, University of
Execution Date (Month Day Year): 11/9/98

Name (line 2):

Second Party
Name (line 1):
Execution Date (Month Day Year):

Name (line 2):

S622715

Receiving Party

- [ ] Mark if additional names of receiving parties attached

Name (line 1): U.S. Department of Energy

Name (line 2):

Address (line 1): P. O. Box 808 (L-376)

Address (line 2):

Address (line 3): Livermore (City) CA (State/Country) 94550 (Zip Code)

- [ ] If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. *(Designation must be a separate document from Assignment.)*

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name:

Address (line 1):

Address (line 2):

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

L-ER

Correspondent Name and Address

Area Code and Telephone Number: (925) 422-4367

Name: William C. Daubenspeck

Address (line 1): U.S. Department of Energy

Address (line 2): Lawrence Livermore National Laboratory

Address (line 3): P. O. Box 808 (MS L-376)

Address (line 4): Livermore, CA 94550

Pages

Enter the total number of pages of the attached conveyance document including any attachments. # 1

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)			Patent Number(s)		
			5622713		

If this document is being filed together with a new Patent Application, enter the date the patent application was (Month Day Year)

Patent Cooperation Treaty (PCT)

Enter PCT application number only if a U.S. Application Number has not been assigned.

PCT PCT PCT

PCT PCT PCT

Number of Properties

Enter the total number of properties involved. # 1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): $ 0.00

Method of Payment: Enclosed ☐ Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the Deposit Account Number: #

Authorization to charge additional fees: Yes ☐ No ☑

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Janet L. Rego	Janet L. Rego	12-22-2000
Name of Person Signing	Signature	Date

Patent #1 5,622,713
S.N. # 08/375,190

Patent Application Filed in the Name of the Contractor
Electable (197)

CONFIRMATORY LICENSE

Title: Method of Detoxifying Animals Suffering From Overdose
Inventor: Rolf Mehlhorn
DOE Contract No.:DE-AC03-76SF00098
Contractor: The Regents of the University of California

Contractor Docket No. IB547-F
UC Case No. 84-067-6
DOE Docket No.: S-85-603
U.S. Patent No.: 5,622,713
Filing Date (U.S.):4/22/97

Foreign Applications filed in or intended to be filed at Contractor's expense in (countries): None

The Contractor certifies that a true copy of the provisions which govern patent rights in "subject inventions" under the above-identified contract is herewith submitted or has been submitted to the U.S. Department of Energy by certification dated October 29, 1996.

WHEREAS, the above-identified contract provides the Contractor with the right to elect to retain title in certain inventions and the Contractor has reported the above-identified invention as a subject invention under the contract, has elected to retain title therein, and has agreed to file a domestic patent application thereon, if not previously filed.

ACCORDINGLY, the Contractor hereby confirms that under the provisions of the above-identified contract governing patent rights, it has granted to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. This license applies to the above-identified invention, the above-identified patent application (s), and any and all divisions or continuations thereof and any resulting patent or reissue patent which may be granted thereon.

The Government reserves for itself, and is hereby granted by the Contractor, the irrevocable power to inspect and make copies of the file wrapper(s) of the above-identified U.S. patent application and of any related or continuation patent application(s), whether domestic or foreign, for the above-identified invention.

It is understood and agreed that this instrument does not preclude the Government from asserting rights under the provisions of the above-identified contract or any other agreement between the Government and the Contractor, or any other rights of the Government with respect to the above-identiified invention.

Signed this 7th day of Nov, 19 97
On behalf of the
Regents of the University of California
(Contractor's Name)
By _____
(Contractor's Official's Signature)
Howard B. Scheckman
Manager, DOE Liaison
(Official's Name and Title)
University of California,
1320 Harbor Bay Parkway
Alameda, CA 94502
(Contractor's Business Address)

Attachment Patent Rights Clause

C:\DOCSOPEN\OGCS06\HOSCHECK\MEMO\NBX01!.DOC

(h) Employee Assistance Program Records of DOE Employees (DOE-34)

(i) Physical Fitness Test Records — Includes only LANL Security and Safeguards Department records on security inspectors and guards certification for DOE physical fitness standards. (DOE-77)

ARTICLE XI, CL. 5 - SPECIAL AGREEMENT ON THE DISPOSITION OF RECORDS (SPECIAL)

The following agreement is entered into pursuant to Article VII, Clause 4 (d), "Accounts, Records and Inspection — Disposition of Records," of this contract:

(a) Government records. Records that are owned by the government pursuant to the provisions of this contract shall be disposed of by the University in accordance with the direction of the Contracting Officer. Such disposition instructions will in no way limit the right of the University to make copies of such records it deems necessary.

(b) University records. Records that are owned by the University in accordance with Article VI, Clause 10, "Contract Records," of this contract, shall be disposed of in accordance with the University's records retention policies.

(c) Costs of storage and retention. The cost of storage and disposition of all records and copies shall be borne by the government and compensated through the method of payment described in Article VII, Clause 3, "Payments and Advances," of this contract, both before and after termination until the time specified in paragraph (d) of this clause.

(d) Applicable schedules for disposal. Notwithstanding any other provision of this contract, all records and copies in the possession of the University relating to this contract shall be preserved by the University until the later of (i) the University institutional records disposal schedule (for University records), (ii) the DOE disposal schedule (for government records), or (iii) October 1, 2002, except as may be agreed upon by the Government and the University.

(e) Claims requiring access to records which have been disposed. The University reserves the right to assert a defense against any claim by the Government the defense of which is premised upon any record properly disposed of in accordance with this clause.

ARTICLE XII INTELLECTUAL PROPERTY

ARTICLE XII, CL. 1 - PATENTS RIGHTS - 37 CFR 401.14

* Modified for this contract

The following applies except for inventions made by the University arising under University Research and Supporting Efforts for the Laboratory, provided pursuant to Article VIII, Clause 2, and under complementary and beneficial program activities at non-Laboratory facilities, in which case rights in such inventions shall be governed by the provisions of subparagraph (g) of this clause.

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).

(2) "Subject Invention" means any invention of the University conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act (7 U.S.C. § 2401(d)) must also occur during the period of contract performance.

(3) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. § 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting at 13 C.F.R. 121.3-8, and in 13 C.F.R. 121.3-12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) Counsel for Intellectual Property assisting the DOE contracting activity.

(8) "Exceptional Circumstance Subject Invention" means any Subject Invention for which DOE provides the exceptional circumstances finding and analysis in writing under 35 U.S.C. § 202(a)(ii) and the Procedures of 37 C.F.R. Part 401.3(e).

(9) "Secretary" means the Secretary of Energy.

* Modified for this contract

(b) Allocation of Principal Rights.

(1) The University may retain the entire right, title and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. § 203. With respect to any Subject Invention in which the University retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

(2) The University shall not elect to retain title to any Exceptional Circumstance Subject Invention until DOE procedural requirements have been met to DOE's sole satisfaction.

(3) The DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the government after the effective date of this contract and effectuate those license or other rights which are necessary for the government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(4) The right of the University to elect title to Subject Inventions is subject to the invention rights disposition in treaties or international agreements identified at Appendix C and existing or future class waivers to third parties by DOE, such as Work for Others, User Facility and Cooperative Research and Development Agreement (CRADA) waivers.

(5) The DOE has declared the following to be Exceptional Circumstance inventions:

(i) Subject Inventions relating to uranium enrichment, including isotope separation;

(ii) Subject Inventions relating to storage and disposal of civilian high level nuclear waste or spent nuclear fuel;

(iii) Subject Inventions related to subject matter that is sensitive under Section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2168 (1982)); and

(iv) Subject Inventions arising under the US Advanced Battery Consortium research and development.

DOE reserves the right to unilaterally amend this contract to add or delete Exceptional Circumstance Subject Inventions that may, in the national interest, be designated by the Secretary.

(6) The University, pursuant to applicable laws and regulations, may petition for waiver of the Government's rights with respect to Subject Inventions not electable by the University under the terms of this paragraph (b).

(c) Invention Disclosures, Election of Title and Filing of Patent Applications by the University.

* Modified for this contract

(1) The University shall establish and maintain active and effective procedures by which the University will use its best efforts to assure that Subject Inventions are promptly identified and disclosed to University personnel responsible for patent matters within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. This reporting requirement also applies to Subject Inventions of Participants in any CRADA in which the University is a party. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the University shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The University shall disclose each Subject Invention to the Contracting Officer within two months after the inventor discloses it in writing to University personnel responsible for patent matters or, if earlier, within six months after the University becomes aware that a Subject Invention has been made, but in any event before any on sale, public use, or publication of such invention known to the University. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made, the inventors, all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the University shall promptly notify the DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the University.

(3) The University will elect in writing whether or not to retain title to any such invention by notifying the DOE within two years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the DOE to a date that is no more than 60 days prior to the end of the statutory period.

(4) The University will file its initial patent application on a Subject Invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The University will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(5) Requests for extension of time for disclosure, election, and filing under subparagraphs (1), (2), (3) and (4) may, at the discretion of the DOE, be granted.

* Modified for this contract

(d) Conditions When the Government May Obtain Title. The University will convey to the DOE, upon written request, title to any subject invention:

(1) If the University fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the DOE may only request title when election is prohibited by DOE pursuant to (b) above or within 60 days after learning of the failure of the University to disclose or elect within the specified times.

(2) In those countries in which the University fails to file patent applications within the times specified in (c) above; provided, however, that if the University has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the DOE, the University shall continue to retain title in that country.

(3) In any country in which the University decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) Minimum Rights to University and Protection of the University Right to File.

(1) The University may request the right to reserve a revocable nonexclusive royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the University fails to disclose the invention within the times specified in (c), above. The University's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the University is a party and includes the right to grant sublicenses of the same scope to the extent the University was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the DOE except when transferred to the successor of that part of the University's business to which the invention pertains.

(2) The University's domestic license may be revoked or modified by the DOE to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 C.F.R. Part 404 and DOE licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the University has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the DOE to the extent the University, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the DOE will furnish the University a written notice of its intention to revoke or modify the license, and the University will be allowed thirty days (or such other time as may be authorized by the DOE for good cause shown by the University) after the notice to show cause why the license should not be revoked or modified. The University has the right to appeal, in accordance with the applicable regulations in 37 C.F.R. Part 404 and DOE regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

* Modified for this contract

(f) University Action to Protect the Government's Interest.

(1) The University agrees to execute or to have executed and promptly deliver to the DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the University elects to retain title, and (ii) convey title to the DOE when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The University agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the University each Subject Invention made under the contract in order that the University can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the government's rights in the Subject Inventions. The disclosure format should require, as a minimum, the information required by (c)(1) and (2), above. The University shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The University will notify the DOE of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The University agrees to include, with the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under Contract No. DE-AC03-76SF00098 awarded by the U.S. Department of Energy. The government has certain rights in the invention."

(5) The University shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing Subject Inventions during that period, and certifying that all Subject Inventions have been disclosed (or that there are no such inventions) and that the procedures required by subparagraph (c)(1) above have followed, and listing all subcontracts containing a patent rights clause or certifying that there were no such subcontracts; and

(ii) A final report, within three months after completion of the contracted work, listing all Subject Inventions or certifying that there were no such inventions.

(6) The University agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause provided, however, that any such disclosure of a Subject Invention in which the University has elected to retain title is subject to 35 U.S.C. § 205.

* Modified for this contract

(g) Subcontracts.

(1) The University will include the clause at 48 C.F.R. Part 952.227-71 dated April 1987 suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic non-profit organization and such clause as modified for subcontracts which are subject to Exceptional Circumstances. The subcontractor will retain all rights provided for the University in this clause, and the University will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The University will include in all other subcontracts, regardless of tier, for experimental, developmental or research work the patent rights clause required by DEAR Subpart 970.27 and 41 C.F.R. Part 9-9.107-5(a) and such clause as modified for subcontracts which are subject to Exceptional Circumstances.

(3) In the case of subcontracts, at any tier, when the prime award with the DOE was a contract (but not a grant or cooperative agreement), the DOE, subcontractor, and the University agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(4) In the event of a refusal by a prospective subcontractor to accept such a clause, the University—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(5) The University shall promptly notify the Contracting Officer, in writing upon the award of any subcontract at any tier containing a patent rights clause, by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the University shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(6) The University will not, as a part of the consideration for awarding the subcontract, obtain rights in any subcontractor's subject inventions.

(h) Reporting on Utilization of Subject Inventions. The University agrees to submit on request periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the University or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the University, and such other data and information as the DOE may reasonably specify. The University also agrees to provide additional reports as may be requested by the DOE in connection with any march-in proceeding undertaken by the DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C.

* Modified for this contract

§ 202(c)(5), the DOE agrees that it will not disclose such information to persons outside the government without permission of the University.

(i) Publication Release. It is recognized that during the course of the work under this contract, the University or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the University, patent approval for release or publication shall be secured from the University personnel responsible for patent matters prior to any such release or publication. Where publication releases are requested of DOE, DOE's response to such requests for approval shall not be withheld for more than 90 days except in circumstances in which a domestic application must be filed in order to protect foreign patent rights. In the latter case, the Department shall be granted an additional 180 days within which to respond to the request for approval. The period of 180 days may be extended by mutual agreement of the parties.

(j) March-in Rights. The University agrees that with respect to any Subject Invention in which it has acquired title, the DOE has the right in accordance with the procedures in 37 C.F.R. 401.6 and any supplemental regulations of the DOE to require the University, an assignee or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the University, assignee, or exclusive licensee refuses such a request the DOE has the right to grant such a license itself if the DOE determines that:

(1) Such action is necessary because the University or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the University, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the University, assignee or licensees; or

(4) Such action is necessary because the agreement required by 35 U.S.C. § 204, Preference for U.S. Industry, has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations. Rights to a subject invention in the United States may not be assigned without the approval of the DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the University.

(l) Communication. Communications to DOE with regard to this clause shall be directed to the Patent Counsel, San Francisco Field Office.

* Modified for this contract

(m) Examination of Records Relating to Inventions.

(1) The Contracting Officer or any authorized representative shall, until three years after final payment under this contract, have the right to examine any books (including laboratory notebooks, records, and documents) of the University relating to the conception or first actual reduction to practice of inventions in the same field of technology at the Laboratory as the work under this contract to determine whether—

(i) Any such inventions are Subject Inventions;

(ii) The University has established and maintains the procedures required by subparagraphs (c)(1) and (4) of this clause; and

(iii) The University and its inventors have complied with the procedures of subparagraphs (c)(1) and (4) of this clause.

(2) If the Contracting Officer learns of an unreported University invention which the Contracting Officer believes may be a Subject Invention, the University may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(n) Withholding of Payment.

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or five percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the University fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to subparagraph (c)(1) above;

(ii) Disclose any Subject Invention pursuant to subparagraph (c)(2) above;

(iii) Deliver acceptable interim reports pursuant to subparagraph (f)(5)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (g)(5) above.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the University has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

* Modified for this contract

(3) Final payment under this contract shall not be made before the University delivers to the Contracting Officer all disclosures of Subject Inventions required by subparagraph (c)(2) above, an acceptable final report pursuant to subparagraph (f)(5)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(o) Atomic Energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the University or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the University will obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause.

(p) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the University agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the University, which are owned or controlled by the University, at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility: (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(q) Rights Governed by Other Agreements. Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, notwithstanding any disposition of rights contained in this Prime Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others, User Facility and CRADA class waivers) or individually negotiated waiver which applies to the agreement and shall take precedence over any disposition of rights in this Prime Contract. Where an invention is conceived in the course of work under this Prime Contract, but is later reduced to practice under a Work for Others or CRADA agreement, rights to such invention shall be governed by the provisions incorporated, with DOE approval, in the Work for Others or CRADA agreement. Nothing in this paragraph shall abrogate the rights of third parties under any agreement approved by DOE and entered into prior to any such DOE class waiver.

* Modified for this contract

(r) Educational Awards Subject to 35 U.S.C. § 212. The University shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. § 212 in an area of technology related to Exceptional Circumstances technology, or which is subject to treaties or international agreements as set forth in subparagraphs (b)(2), (b)(3), (b)(4) and (b)(5) of this clause or agreements other than funding agreements. The Contracting Officer shall have the right to disapprove such placement.

ARTICLE XII, CL. 2 - PATENT INDEMNITY (APR 1984) - FAR 27.203

Except as otherwise authorized by the Contracting Officer, the University shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except U. S. Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) from the University's subcontractors in accordance with 48 CFR 27.203.

ARTICLE XII, CL. 3 - AUTHORIZATION AND CONSENT - DEAR 970.2701(a) [41 CFR 9-9.102-2]

(a) The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontracts hereunder (including all lower-tier subcontracts).

(b) In the case of suit or potential suit in copyright infringement, the University may request authorization and consent in copyright from DOE. Programmatic necessity shall be a major consideration in grant of authorization and consent.

ARTICLE XII, CL. 4 - REPORTING OF ROYALTIES - DEAR 970.2701(a) [41 CFR 9-9.110]

If any royalty payments are reflected in the contract cost to the Government, the University agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. The provisions of this clause, appropriately modified as to parties, shall be included in all subcontracts that exceed $25,000 unless otherwise approved by the Contracting Officer.

* Modified for this contract

ARTICLE XII, CL. 5 - RIGHTS TO PROPOSAL DATA - FAR 27.409(s)

Except as otherwise authorized by the Contracting Officer, the University, pursuant to FAR 48 CFR 27.409(s), shall include the clause of 48 CFR 52.227-23 in any subcontract awarded based on consideration of a technical proposal.

ARTICLE XII, CL. 6 - RESERVED

ARTICLE XII, CL. 7 - RIGHTS IN DATA (SPECIAL)

The following applies except for technical data and copyright created by the University arising under University Research and Supporting Efforts for the Laboratory provided pursuant to Article VIII, Clause 2, and complementary and beneficial program activities at a non-Laboratory facility, in which case rights in such data and copyright shall be those provided as if the data or copyright were created by a third party university under a DOE funding agreement.

(a) Definitions.

(1) "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

(2) "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

(3) "Limited Rights Data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

(4) "Technical Data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

(5) "Restricted Computer Software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

(6) "Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

* Modified for this contract

(7) "Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g) in this clause.

(8) "Restricted rights," as used in this clause, means the rights of the Government in Restricted Computer Software, including minor modifications of such computer software, as set forth in a Restricted Rights Notice of paragraph (h) in this clause.

(b) Allocation of rights.

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this contract with the University retaining a right to copy and use such under subparagraph (2)(ii) below.

(ii) The right to inspect technical data and computer software first produced or specifically used in the performance of this contract at all reasonable times (for which inspection the proper facilities shall be afforded DOE by the University and its subcontractors);

(iii) The right to have all technical data and computer software first produced or specifically used in the performance of this contract delivered to the Government or otherwise disposed of by the University, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract, provided that nothing contained in this paragraph shall require the University to actually deliver any technical data or computer software, the delivery of which is excused by this Rights in Data clause;

(iv) Unlimited rights in technical data and computer software specifically used in the performance of this contract, except as provided herein regarding copyright, and except for technical data and computer software pertaining to items of standard commercial design, and further, subject to the withholding provisions for protected CRADA information in accordance with Technology Transfer actions under this contract; the University agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer; provided, that if such data are Limited Rights Data or Restricted Computer Software the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) hereof ("Rights in Limited Rights Data") or paragraph (h) hereof ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the University fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the University of the action taken.

(2) The University shall have:

* Modified for this contract

(i) The right to withhold its Limited Rights Data and Restricted Computer Software in accordance with the provisions of this clause;

(ii) The right to copy and to use for its private purposes, subject to patent, security or other provisions of this contract, data it first produces in the performance of this contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright in works subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

The University agrees that for Limited Rights Data or Restricted Computer Software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this contract which is authorized to be marked by DOE, the University shall treat such data in accordance with any restrictive legend contained thereon.

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) Copyright (General).

(1) The University agrees not to mark, register or otherwise assert a copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) below.

(2) Except for material to which the University has obtained the right to assert copyright in accordance with either paragraph (d) or (e) hereof, the University agrees not to include in the data delivered under this contract any material copyrighted by the University and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) below. If the University believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the University shall obtain the written authorization of the Contracting Officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles). The University shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract, and published in academic, technical or professional journals, symposia proceedings or similar works. When assertion of copyright is made, the University shall affix the applicable copyright notice of 17 U.S.C. § 401 or § 402 and acknowledgement of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S.

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Copyright Office. The University grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(e) Copyrighted works (other than scientific and technical articles).

(1) The University may obtain permission to assert copyright, on an individual work, group or class basis, subsisting in technical data and computer software first produced by the University in performance of this contract, where the University can show that commercialization would be enhanced by such copyright protection, subject to the following:

(i) University Request to Assert Copyright.

(A) For data other than scientific and technical articles, the University shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this contract pursuant to this clause. Each request by the University to be complete must include: (1) the identity of the data (including any computer program) for which the University requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (2) the program under which it was funded, (3) on a best effort basis whether the data is subject to an international treaty or agreement, (4) whether the data is subject to export control, (5) a statement that the University plans to commercialize the data within five years of obtaining permission to assert copyright, and (6) for data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization. For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the University from all other funding sources prior to the University's request to Patent Counsel. The request shall include the University's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(B) Permission for the University to assert copyright in excepted categories of data as determined by DOE is expressly withheld. Such excepted categories include data whose release (1) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (2) would not enhance the appropriate transfer or dissemination and commercialization of such data, (3) would have a negative impact on U.S. industrial competitiveness, (4) would prevent DOE from meeting its obligations under treaties and international agreements, or (5) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Intellectual Property. Where data are determined to be under an export control restriction, the University may still obtain permission to assert copyright in such restricted data for purposes of limited commercialization within the constraints provided by the export control statutes and regulations subject to the provisions of this clause. However, notwithstanding any other provision of this contract, all data developed with Naval Reactors' funding and those data that are classified fall within the above excepted categories and permission to assert copyright will not be granted by DOE for those data. Additionally, the rights of the University in data are subject to the disposition of data rights in the treaties and international agreements

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identified under this contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this contract. Also, the University will not be permitted to assert copyright in data in the form of various technical reports generated by the University under the contract without first obtaining the advanced written permission of the Contracting Officer.

(ii) DOE Review and Response to University's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the University to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the University to assert copyright or advise the University that DOE needs additional time to respond and the reasons therefor.

(iii) Permission for University to Assert Copyright.

(A) For computer software, the University shall furnish to the contractor designated by DOE to serve as the DOE centralized software distribution and control point, at the time permission to assert copyright is given under (ii) above: (1) an abstract describing the software suitable for publication, (2) the source code for each software program, and (3) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the University, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The University acknowledges that the above-identified DOE-designated contractor may provide a technical description of the software in an announcement identifying its availability from the copyright holder. If adequate documentation is not available at the time of assertion of copyright, then the University shall require its licensee to supply such documentation within 6 months of license issuance.

(B) Unless otherwise directed by the Contracting Officer, for data other than computer software to which the University has received permission to assert copyright under paragraph (ii) above, the University shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The University acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(C) For a period of five (5) years beginning on the date the University is given permission to assert copyright in data, the University grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. Subject to DOE approval, the five-year period is renewable for two more five-year periods. The DOE approval will be based on the standard that the work is still commercially viable and the market demand is being met.

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(D) After the five (5) year periods set forth in (C) above, or if, prior to the end of such periods, the University abandons commercialization activities pertaining to the data to which the University has been given permission to assert copyright, the University grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(E) Whenever the University obtains permission to assert copyright in data, the University shall affix the applicable copyright notice of 17 U.S.C. § 401 or § 402 on the copyrighted data and also an acknowledgement of the Government sponsorship and license rights of paragraphs (C) and (D) above. Such action shall be taken when the data are delivered to the Government, published, licensed, or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgement of Government sponsorship and license rights shall be as follows:

> NOTICE: The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after (date permission to assert copyright was obtained), subject to two possible five year renewals, the Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

(F) With respect to any data to which the University has received permission to assert copyright, the DOE has the right, during the five-year period(s) set forth in subparagraph (e)(1)(i)(A) above, to request the University to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the University refuses such request, to grant such license itself, if the DOE determines that the University has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(i)(A) above. Before licensing under this subparagraph (F), DOE shall furnish the University a written request for the University to grant the stated license, and the University shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the University) after such notice to show cause why the license should not be granted. The University shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 C.F.R. 781.65 - "Appeals."

(G) No costs shall be allowable for maintenance of copyrighted data for commercial purposes, primarily for the benefit of the University and/or a licensee and which exceeds DOE Program needs, except as expressly

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provided in writing by the Contracting Officer. The University may use its net royalty income to effect such maintenance costs.

(H) At any time the University abandons commercialization activities for data for which the University has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(f) Subcontracting.

(1) The University agrees to use a Rights in Data clause as directed by the Contracting Officer in subcontracts having as a purpose the conduct of research, development, and demonstration work and in subcontracts for supplies.

(2) It is the responsibility of the University to obtain from its subcontractors data and rights therein, on behalf of the Government, necessary to fulfill the University's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the University shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(g) Rights in Limited Rights Data. Except as may be otherwise specified in this contract as data which are not subject to this paragraph, the University agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any Limited Rights Data of the University specifically used in the performance of this contract, provided, however, that to the extent that any Limited Rights Data when furnished or delivered is specifically identified by the University at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such Limited Rights Data shall be marked with the following "Limited Rights Notice":

LIMITED RIGHTS NOTICE

These data contain "Limited Rights Data", furnished under Contract No. DE-AC03-76SF00098 with the United States Department of Energy (and Purchase Order/Subcontract No. _____ if applicable) which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the University, except that further disclosure or use may be made solely for the following purposes:

* Modified for this contract

(a) This "Limited Rights Data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(b) The "Limited Rights Data" may be disclosed to other contractors participating in the Government's program of which this contract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed; and

(c) This "Limited Rights Data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

This Notice shall be marked on any reproduction of this data in whole or in part.

(END OF NOTICE)

(h) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this contract as data which are not subject to this paragraph, the University agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any Restricted Computer Software of the University specifically used in the performance of this contract, provided, however, that to the extent that any Restricted Computer Software when furnished or delivered is specifically identified by the University at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such Restricted Computer Software shall be marked with the following "Restricted Rights Notice":

RESTRICTED RIGHTS NOTICE--LONG FORM

(a) This computer software is submitted with restricted rights under Government Contract No. DE-AC03-76SF00098 (and subcontract _____ if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

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(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(END OF NOTICE)

(2) Where it is impractical to include the Restricted Rights Notice on Restricted Computer Software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE—SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. DE-AC03-76SF00098 (subcontract No. _____ if appropriate) with _____ (name of the University or subcontractor).

(END OF NOTICE)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean Restricted Computer Software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If Restricted Computer Software is delivered with the copyright notice of 17 U.S.C. § 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with unlimited rights, unless the University includes the following statement with such copyright notice:

* Modified for this contract

"Unpublished — rights reserved under the Copyright Laws of the United States."

(i) Scholarly Works.

(1) Each article first produced or composed under this contract and submitted for journal publication shall contain a notice on the front to the effect that the publisher, by accepting the article for publication, acknowledges the U.S. Government's right to retain a nonexclusive, royalty-free license in and to any copyright covering the article. The notice should be similar to the following:

> "The submitted manuscript has been authored by a Contractor (Grantee) of the U.S. Government under Contract (Grant) No. DE-AC03-76SF00098. Accordingly, the U.S. Government retains a nonexclusive, royalty-free license to publish or reproduce the published form of this contribution, or allow others to do so, for U.S. Government purposes."

The University further agrees that if Technical Data first produced under the contract is intended to be incorporated in other than a Government publication, the University shall notify the publisher and Contracting Officer in writing that the Government reserves a nonexclusive, royalty-free, worldwide license in such Technical Data.

(2) The parties agree that the title to the original of unclassified graduate theses, and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of the DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the University for additional compensation other than direct expenses.

(3) For purposes of this contract, copyright of articles shall include scholarly works, such as text and reference books.

ARTICLE XII, CL. 8 - ADDITIONAL TECHNICAL DATA REQUIREMENTS - FAR 27.409(h)

Except as otherwise authorized by the Contracting Officer, the University, pursuant to FAR 48 CFR 27.409(h) shall normally include the clause of FAR 52.227-16 in any subcontract for research, development or demonstration to enable the ordering of technical data as actual need and requirements therefor become known during the course of the subcontract.

ARTICLE XII, CL. 9 - SUBCONTRACTS, PURCHASE ORDERS AND PROCUREMENT - DEAR 970.2701(a) [41 CFR 9-9]

The University shall utilize in its policies and procedures relating to subcontracts, purchase orders and procurement, such additional DOE procurement policies in the Patents and Data area as set forth in 41 CFR,

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Part 9-9, or such other policies and procedures as may be specifically directed in writing by the Contracting Officer or Patent Counsel.

ARTICLE XII, CL. 10 - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT- DEAR 970.2701(a) [41 CFR 9-9.104]

(a) The University shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the University has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the University shall furnish to the Government when requested by the Contracting Officer, all evidence and information in possession of the University pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the University has agreed to indemnify the Government.

(c) Subparagraphs (a) and (b) of this clause shall be included in all subcontracts which exceed $25,000.

ARTICLE XII, CL. 11 - TECHNOLOGY TRANSFER PROCEDURES (SPECIAL)

This clause has as its purpose, implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3159 of P. L. 101-189), and applies only to Laboratory Technology Transfer Activities.

I. TECHNOLOGY TRANSFER

(a) Definitions

(1) The University's Laboratory Director means the individual who has supervision over all or substantially all of the University's operations at the Lawrence Berkeley Laboratory ("Laboratory").

(2) "Laboratory Intellectual Property" means patents, trademarks, copyrights, mask works, and other forms of comparable property rights made under this contract by Laboratory employees or other persons working on site at the Laboratory participating in Laboratory research or technology transfer projects and protected by Federal Law and foreign counterparts.

(3) "Cooperative Research and Development Agreement (CRADA)" means any agreement entered into between the University as operator of the Laboratory and one or more parties including at least one non-Federal party under which the Government, through the Laboratory, provides personnel, services, facilities, equipment, or

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other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified Research or Development (R&D) efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in Sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) "Joint Work Statement (JWS)" means a proposal for a CRADA prepared by the University, signed by the University's Laboratory Director, or his designee, which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the University and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) "Laboratory Biological Materials" means biological materials capable of replication or reproduction, such as plasmids, viruses, DNA molecules, RNA molecules, procaryot or eucaryot cell lines, and the like or associated biological products made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(6) "Laboratory Tangible Research Product (TRP)" means tangible material results of research which (i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility, (ii) are not materials generally commercially available, and (iii) were made under this contract by Laboratory employees or though the use of Laboratory research facilities.

(7) "Laboratory Technology" means any combination of Laboratory Intellectual Property, Laboratory Biological Materials or Laboratory TRP.

(8) "Laboratory Employee Technical Consulting Services" means any agreement (i) by which the University provides Laboratory employee technical consulting services at non-Laboratory facilities, and (ii) in which the University retains the title to Laboratory Intellectual Property and the Government retains its license to Laboratory Technology and the consulting services recipient retains the rights to its employee intellectual property.

(9) "Assignment" means any agreement by which the University transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

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(10) "License Agreement" means any agreement by which the University permits the commercial or noncommercial access, reproduction, manufacture, sale or other exploitation, or other use of Laboratory Intellectual Property.

(11) "Bailment" means any agreement in which the University permits the commercial or non-commercial access and use of Laboratory Biological Materials or Laboratory TRP for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(b) Authority.

(1) In order to ensure the full use of the results of R&D efforts of, and the capabilities of, the Laboratory, technology transfer, including CRADA's, is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980 as amended (15 U.S.C. § 3710a); Section 3132(b) of P.L. 101-189 and of Chapter 38 of the Patent Laws (35 U.S.C. § 200 et seq.); Section 152 of the Atomic Energy Act of 1954 as amended (42 U.S.C. § 2182); Section 9 of the Federal Non-Nuclear Act of 1974 (42 U.S.C. § 5908); and Executive Order 12591 of April 10, 1987.

(2) The University shall conduct technology transfer activities with the clear intent of providing benefit from Federal research to U.S. industrial competitiveness.

(3) In pursuing the technology transfer mission, the University is empowered to conduct activities including, but not limited, to the following: identification and protection of Laboratory Intellectual Property, negotiation of Licensing Agreements for Laboratory Intellectual Property that the University controls or owns, Bailments, entering into CRADA's; providing Laboratory Employee Technical Consulting Services and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO) and providing information exchanges and available Laboratory user facilities. It is fully expected that the University shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, user facilities, WFO, science education activities, Laboratory Employee Technical Consulting Services, personnel exchanges, License Agreements and Assignments.

(c) Allowable Costs.

(1) The University shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to Paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 as amended (15 U.S.C. § 3710). The costs associated with the conduct of technology transfer including activities associated with obtaining, maintaining, and licensing Laboratory Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, and operation of the ORTA shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this contract. The costs pertaining to obtaining, maintaining, and licensing

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Laboratory Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, and the operation of the ORTA in any fiscal year shall not exceed an amount equal to 0.5 percent of the Federal R&D budget (operating, including WFO) of the Laboratory for that fiscal year, without written approval of the Contracting Officer, in addition to any separately designated funds.

(2) The University's participation in Laboratory Intellectual Property litigation to enforce or defend claims * associated with its technology transfer efforts shall be as provided in Article VII, Clause 1, "Costs and Expenses," paragraph (d)(4), and Article XVII, Clause 1, "Litigation and Claims," of this contract.

(d) Conflicts of Interest — Technology Transfer. The University shall develop implementing procedures that seek to avoid Laboratory employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall cover other persons working on site at the Laboratory participating in Laboratory research or technology transfer projects. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this modification. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform Laboratory employees (or other persons working on-site at the Laboratory participating in Laboratory research or technology transfer projects) of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of Paragraph II.(e) of this clause;

(2) Review and approve Laboratory employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Laboratory Intellectual Property;

(3) Conduct work performed using royalties so as to avoid adverse interference with or adverse effects on ongoing Department of Energy (DOE) projects and programs;

(4) Conduct activities relating to commercial utilization of Laboratory Intellectual Property so as to avoid adverse interference with or adverse effects on user facility or WFO activities of the University;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the contract for DOE or other Federal agencies where the new work or proposal involves Laboratory Intellectual Property in which the University has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this contract, and consistent with Article XII, Clause 1 entitled "Patent Rights", paragraph (k), obtain the approval of the Contracting Officer for any licensing of or assignment of title

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to Laboratory Intellectual Property rights by the University to any business or corporate affiliate of the University;

(8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Laboratory Intellectual Property to any current employee or consultant or to any person who has been a Laboratory employee or consultant within the past two years or to a company in which he or she is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Laboratory Intellectual Property interest of the University prior to execution of WFO's or user agreements.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the University shall prepare procedures and take reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory.

(f) U.S. Industrial Competitiveness.

(1) In the interest of enhancing U.S. Industrial Competitiveness, the University shall, in its licensing and assignments of Laboratory Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The University shall consider the following factors in all of its licensing and assignment decisions involving Laboratory Intellectual Property:

(i) Whether any resulting design and development will be performed in the U.S. and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the U.S.; or

(ii) (A) Whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and further

(B) Whether in licensing any entity subject to the control of a foreign company or government, such foreign government permits U.S. agencies, organizations, or other persons to enter into cooperative R&D agreements and licensing agreements, and have policies to protect U.S. intellectual property rights.

If the University determines that neither of the above two sets of conditions is likely to be fulfilled, the University, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(2) The University agrees to be bound by the provisions of 35 U.S.C. § 204 as set forth in Article XII, Clause 1, "Patent Rights," paragraph (j)(4).

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(g) Indemnity — Product Liability. In entering into written technology transfer R&D, licensing or assignment agreements, the University agrees to include in such agreements a requirement that the University and the U.S. Government be indemnified for all damages, costs, and expenses, including attorney's fees, arising from the commercialization and utilization of such technologies, including, but not limited to, the making, using, selling or exporting of products, processes, or services derived from the transferred technology, or such other provision as mutually agreed upon by the University and DOE.

(h) Royalty Uses and Shares.

(1) Royalties or other income earned or retained by the University as a result of performance of authorized technology transfer activities herein shall be used by the University for scientific research, development, technology transfer, and education at the Laboratory, consistent with the R&D mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. § 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. § 200 et seq.) as amended through the effective date of this modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the University for the purposes as described above in this paragraph. Any inventions arising out of such scientific R&D activities shall be deemed to be "Subject Inventions" under the contract. To the extent it provides the most effective technology transfer, the licensing of Subject Inventions shall be administered by University employees on location at the Laboratory. The University, as a demonstration of its commitment to the National Technology Transfer objective, agrees to return net royalties derived from the licensing of Laboratory Intellectual Property to the Laboratory..

(2) The University shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein, will be applied at the Laboratory, and at the end of the year, provide a separate annual accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The University shall establish a policy for making awards or sharing of royalties with University Laboratory employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.

(i) Transfer to Successor Contractor. Subject to this paragraph, in the event of termination or expiration of this contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The University shall transfer title, as one package, in all patents and patent applications, License Agreements, accounts containing royalty revenues from such License Agreements, including equity positions in Third Party entities, and other Laboratory Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting

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Officer, if the successor contractor or Government agrees to honor all license terms, obligations to inventors, and obligations and liabilities of the University in connection with these patents and patent applications. If the successor contractor or Government refuses to fully honor the foregoing, then the University shall continue with title and use of the funds in the University, provided that royalties or other income earned and retained in the University is utilized in accordance with paragraph I.(h) above.

(j) Technology Transfer Affecting the National Security.

(1) The University shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer agreement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. § 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization or such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapons production complex. The DOE shall use its best efforts to complete its determination within sixty (60) days of the University's notification, and provision of any supporting information, and DOE shall promptly notify the University in writing as to whether the technology is transferable.

(2) The University shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADA's, licensing agreements and assignments, notice to such Third Parties that the export of goods and/or Technical Data from the United States may require some form of export control license from the U.S. Government, and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the University is responsible to conduct internal export control reviews and assure that technology is transferred, in accordance with applicable laws.

(k) Records. The University shall maintain records of its technology transfer activities, in a manner and to the extent satisfactory to the DOE, and specifically including, but not limited to, the Licensing Agreements, Assignments and the records required to implement the requirements of paragraphs (e), (f), and (h), herein, and shall provide reports to the Contracting Officer to enable DOE to maintain the recording requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980 as amended (15 U.S.C. § 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the University and the DOE and in such a format which will serve to adequately inform DOE of the University's technology transfer activities while protecting any data not subject to disclosure under the contract and Section II. herein. Such records shall be made available in accordance with Article VII, Clause 4 of this contract entitled "Accounts, Records, and Inspection."

(l) Reports to Congress. To facilitate DOE's reporting to Congress, the University is required to annually submit to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Laboratory Intellectual Property rights in Laboratory innovations with commercial

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promise and plans for managing such innovations so as to benefit the competitiveness of U.S. industry. This plan shall be provided to the Contracting Officer on or before October first of each year.

(m) Oversight and Appraisal. The University is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with Article VII, Clause 4, "Accounts, Records and Inspection," of this contract. The University's performance in implementing the technology transfer mission and the effectiveness of the University's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

II. TECHNOLOGY TRANSFER THROUGH COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

Upon approval of the Contracting Officer and as provided in a DOE-approved JWS, the University's Laboratory Director or his designee may enter into CRADA's on behalf of the DOE subject to the requirements set forth herein.

(a) Review and Approval of CRADAs.

(1) Each JWS shall be submitted to the Contracting Officer for approval. The University's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the University to be owned by the Government to assist the Contracting Officer in his approval determination.

(2) The University shall submit documentation with the JWS of how Fairness of Opportunity requirements of paragraph I.(e), above, were met (specific to the proposed CRADA).

(3) Within ninety (90) days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. If a modification is required, the Contracting Officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The Contracting Officer shall provide a written explanation to the University's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

(4) Upon approval of a JWS, the University's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer request a modification of the CRADA, an explanation of such request shall be provided to the University's Laboratory Director.

(5) The University shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the Contracting Officer. The University may submit its proposed CRADA to the Contracting Officer at the time of submitting its proposed JWS or any time thereafter. However, the Contracting Officer is not

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obligated to respond under subparagraph (4), above, until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.

(b) Selection of Participants. The University's Laboratory Director or designee, in deciding what CRADA to enter into shall:

(1) Give special consideration to small business firms, and consortia involving small business firms;

(2) Grant U.S. preference in accordance with the licensing and assignment requirements of paragraph I.(f) above;

(3) Provide Fairness of Opportunity in accordance with the requirements of paragraph I.(e) above; and

(4) Give consideration to the Conflicts of Interest requirements of paragraph I.(d) above.

(c) Withholding of Data.

(1) The University may provide for appropriate protection against dissemination of data produced as a result of R&D activities conducted under a CRADA, for a period of up to five (5) years from the time the data is first produced. Such data must be data that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal Third Party. Since such data is exempt from disclosure under the Freedom of Information Act, DOE shall cooperate with the University in withholding such data pursuant to Section 15 U.S.C. § 3710a(c)(7)(B).

(2) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the University agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its contractors by or on behalf of the Government. Before transmitting such data, the University shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(3) In addition to its authority to license Laboratory Intellectual Property, the University may enter into licensing agreements with third parties for data developed by the University under a CRADA subject to other provisions of this contract. However, the University shall neither use the protection against dissemination nor the licensing of data as an alternative to obtaining commercially reasonable patent protection of any invention contained in such data.

(d) Work For Others and User Facility Program.

(1) DOE considers Work for Others (WFO's) and User Facility Agreements (UFA's) not to be CRADA's. WFO's and UFA's are available for use by the University in addition to CRADA's for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The University agrees to inform

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prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of WFO and UFA opportunities, including Class Waiver provisions associated therewith.

(2) Where the University believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.

(e) Conflicts of Interest.

(1) Except as provided in paragraph (3), below, the University shall assure that no Laboratory employee of the University shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(i) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the University) in which such employee serves as an officer, director, trustee, partner, or employee—

(A) holds financial interest in any entity, other than the University, that has a substantial interest in the preparation, negotiation, or approval of a CRADA;

(B) receives a gift or gratuity from any entity, other than the University, that has a substantial interest in the preparation, negotiation, or approval of a CRADA; or

(ii) A financial interest in any entity, other than the University, that has a substantial interest in the preparation, negotiation, or approval of a CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(2) The University shall require that each Laboratory employee of the University who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the University to the Contracting Officer that the circumstances described in subparagraph (e)(1) above do not apply to that employee.

(3) The requirements of subparagraphs (e)(1) and (2) above shall not apply in a case where an employee, described therein, advises through the University the Contracting Officer in advance of his or her participation in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (e)(1), and the Contracting Officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the University employee's participation in the process of preparing, negotiating, or approving the cooperative agreement.

III. TECHNOLOGY TRANSFER IN OTHER COST SHARING AGREEMENTS

[redacted]

In conducting R&D activities through cost-shared agreements not covered by Section II., above, the University, with written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph II.(c) herein.

ARTICLE XIII RESERVED

ARTICLE XIV ENVIRONMENT, SAFETY, AND HEALTH

ARTICLE XIV, CL. 1 - ENVIRONMENTAL PROTECTION (SPECIAL)

(a) The University will comply with applicable environmental laws, including laws, codes, ordinances, and regulations of the United States, a state or territory, municipality or other political subdivision, and Executive Orders, and with DOE directives identified and agreed upon pursuant to Article XV, Clause 3, "Procedure for Treatment of Prospective DOE Directives and Extant DOE Orders," of this contract.

(b) The University will with regard to these environmental laws and directives, provide for the inclusion of the following in the performance measures embodied in Appendix F, Part A:

(1) Research such laws and directives on an ongoing basis and, for changes therein, adjust contract performance to assure continuing compliance;

(2) Identify and inform the Contracting Officer in writing of any inconsistencies among these laws and directives which would affect or preclude the University's ability to perform its work; and, in conjunction with the Contracting Officer, bring such inconsistencies to the attention of the concerned regulatory agency (together with any approved action plans for dealing with such inconsistencies); and

(3) Include appropriate consideration of such laws and directives in planning activities performed under this contract.

(c) The University shall set forth appropriate environmental protection requirements in subcontracts with respect to work to be performed on-site at a DOE-owned or leased facility. The University shall submit for approval to the DOE, through the Contracting Officer, its policies, procedures, and directives in subcontracts with respect to work to be performed on site at a DOE owned or leased facility.

(d) The subcontract provisions shall provide that no claim shall be made for adjustment in the subcontract amount for the performance schedule or for damages, by reason of a stop work order issued for failure to

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