

**TERMS AND CONDITIONS  
LEASE OF REAL PROPERTY (LRP March 2011)**

**1. DEFINITIONS**

As used throughout this Lease, the following terms shall have the meanings set forth below:

- (a) "Government" means the United States of America and includes DOE.
- (b) "DOE" means the Department of Energy or any duly authorized representative thereof.
- (c) "Company" means UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.
- (d) Except as otherwise provided in this Lease, the term "subcontracts" includes purchase orders under this Lease.
- (e) "Commencement Date" means the first day of the term.
- (f) "Delivery Date" means the date specified in or determined pursuant to the provisions of this Lease for delivery of the premises to the Company, improved in accordance with the provisions of this Lease and substantially complete, as such date may be modified in accordance with the provisions of this Lease.
- (g) "Delivery Time" means the number of days provided by this Lease for delivery of the premises to the Company, as such number may be modified in accordance with the provisions of this Lease.
- (h) "Excusable Delays" mean delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation, (1) acts of God or of the public enemy, (2) acts of the United States of America in either its sovereign or contractual capacity, (3) acts of another contractor in the performance of a contract with the Company, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) freight embargoes, (10) unusually severe weather, or (11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.
- (i) "Lessor" means the sub-lessor if this Lease is a sublease.
- (j) "Lessor shall provide" means the Lessor shall furnish and install at Lessor's expense.
- (k) "Notice" means written notice sent by certified or registered mail, Express Mail or comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.
- (l) "Premises" means the space described on the Company's Lease for Real Property form.
- (m) "Substantially complete" and "substantial completion" mean that the work, the common and other areas of the building, and all other things necessary for the Company's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this Lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.
- (n) "Work" means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Company as specified in this Lease.

**2. ADMINISTRATION AND PAYMENT**

The Company will make payment hereunder from Government funds advanced and agreed to be advanced to it by DOE, and not from its own assets. Administration of this Lease may be transferred from the Company to DOE or its designee, and in case of such transfer and notice thereof to the Lessor, the Company shall have no further responsibilities hereunder. If this Lease is transferred by the Company to DOE, this "Terms and Conditions, Lease of Real Property" form will be superseded (without adjustments of the type specified in paragraph (b) of the "Changes" clause) by General Services Administration Form 3517, "General Clauses" (Acquisition of Leasehold Interests in Real Property), current on the date this Lease was entered into.

**3. SUBLETTING**

The Company may sublet any part of the premises but shall not be relieved from any obligations under this Lease by reason of any subletting.

**4. COMPLIANCE WITH APPLICABLE LAWS**

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Company will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this Lease.

**5. INSPECTION – RIGHT OF ENTRY**

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Company may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this Lease, which purposes shall include, but not be limited to:

- (1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;
- (2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for

the offered premises or the premises;

(3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and

(4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State, and local law.

(b) Nothing in this clause shall be construed to create a Company duty to inspect for toxic materials or to impose a higher standard of care on the Company than on other lessees. The purpose of this clause is to promote the ease with which the Company may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

## **6. CONDITION REPORT**

A joint physical survey and inspection report of the premises will be made as of the effective date of this Lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

## **7. DELIVERY AND CONDITION**

(a) Unless the Company elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Company reserves the right to determine when the space is substantially complete.

(b) If the premises do not in every respect comply with the provisions of this Lease, the Company may, in accordance with the Failure in Performance clause, elect to reduce the rent payments.

## **8. PROGRESSIVE OCCUPANCY**

The Company shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire Leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Company. The Company shall pay rent commencing with the first business day following substantial completion of the entire Leased premise unless the Company has elected to occupy the Leased premises incrementally. In case of incremental occupancy, the Company shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm Lease term will be a composite determined from all rent commencement dates.

## **9. EFFECT OF ACCEPTANCE AND OCCUPANCY**

Neither the Company's acceptance of the premises for occupancy, nor the Company's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Company under this Lease, or as otherwise prejudicing the Company with respect to any such requirement or right.

## **10. DEFAULT IN DELIVERY - TIME EXTENSIONS**

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date (as such date may be modified pursuant to this Lease), time is of the essence. If the Lessor fails to prosecute the work with the diligence that will ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Company may by notice to the Lessor terminate this Lease, which termination shall be effective when received by Lessor. The Lessor and the Lessor's sureties, if any, shall be jointly and severally liable for any damages to the Company resulting from such termination, as provided in this clause. The Company shall be entitled to the following damages:

(1) The Company's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement Lease or Leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term; provided, if the Company procures replacement premises for a term (including all option terms) in excess of the term, the Lessor shall not be liable for excess Company rent or adjustments during such excess part of such term.

(2) All administrative and other costs borne by the Company in procuring a replacement Lease or Leases.

(3) Such other, additional relief as may be provided for in this Lease, at law or in equity.

Damages to which the Company may be entitled under this clause shall be due and payable thirty (30) days next following the date Lessor receives notice from the Company specifying such damages.

(b) Delivery by Lessor of less than the usable minimum square footage required by this Lease shall in no event be construed as substantial completion, except as permitted by the Company.

(c) Notwithstanding paragraph (a) of this clause, this Lease shall not be terminated under this clause nor the Lessor charged with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays and (2) the Lessor within ten days from the beginning of any such delay (unless extended in writing by the Company) provides notice to the Company of the causes of delay. The Company shall ascertain the facts and the extent of delay. If the facts warrant such action, the delivery date shall be extended, by the Company, to the extent of such delay at no additional costs to the Company. A time extension is the sole remedy of the Lessor.

## **11. DEFAULT BY LESSOR DURING THE TERM**

(a) Each of the following shall constitute a default by Lessor under this Lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this Lease, or failure to perform any other requirement of this Lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days following Lessor's receipt of notice thereof from the Company.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this Lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Company may, by notice to Lessor, terminate this Lease for default and if so terminated, the Company shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

## **12. LIQUIDATED DAMAGES**

If the Lessor fails to complete the work within the time fixed in the Lease or letter of award, the Lessor shall pay the Company as fixed and agreed liquidated damages, pursuant to this clause, the sum indicated on the "Lease of Real Property" form for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Company. This remedy is not exclusive and is in addition to any other remedies which may be available under this Lease or in the law.

## **13. FAILURE IN PERFORMANCE**

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this Lease are interdependent. If the Lessor fails to provide any service, utility, maintenance, repair or replacement required under this Lease, the Company may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this Lease, then or thereafter due, the resulting cost to the Company, including all administrative costs. If the Company elects to perform any such requirement, the Company and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Company may deduct from any payment or payments under this Lease, then or thereafter due, an amount which reflects the value of the requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Company under this Lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this Lease or at law.

## **14. ALTERATIONS**

The Company shall have the right during the existence of this Lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Company and may be removed or otherwise disposed of by the Company. If the Lease contemplates that the Company is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Company shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

## **15. CHANGES**

(a) The Company may at any time, by written order, make changes within the general scope of this Lease in any one or more of the following:

- (1) Specifications;
- (2) Work or services;
- (3) Facilities or space layout; or
- (4) Amount of space, provided, in this case, that the Lessor consents to the change.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this Lease, whether or not changed by the order, the Company shall modify this Lease by:

- (1) Making an equitable adjustment in the rental rate;
- (2) Making a lump sum price adjustment; or
- (3) Revising the delivery schedule.

(c) The Lessor shall submit a proposal for adjustment within 30 days from the date of receipt of the written order. However, if the Company decides that the facts justify it, the Company may receive and act upon a proposal submitted before final payment under the Lease.

(d) Adjustments for operating expenses in vacant Leased premises will be in accordance with the Adjustment for Vacant Premises clause.

(e) No services or work for which an additional cost or fee will be charged by the Lessor will be furnished without the prior written authorization of the Company.

## **16. MAINTENANCE OF PREMISES**

The Lessor shall maintain the premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises,

without reasonably preventable or recurring disruption, as is required for the Company's access to, occupancy, possession, use and enjoyment of the premises as provided in this Lease, except in case of damage arising from the willful act or the negligence of a Company employee. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Company representative in charge.

#### **17. DAMAGE BY FIRE AND OTHER CASUALTY**

If the entire premises are destroyed by fire or other casualty, this Lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Company, the Company may terminate the Lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this Lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the Company caused by the willful or negligent act or omission of Lessor.

#### **18. ADJUSTMENT FOR VACANT PREMISES**

(a) If the Company fails to occupy any portion of the Leased premises or vacates the premises in whole or in part prior to expiration of the firm term of the Lease, the rental rate will be reduced.

(b) The rate will be reduced by that portion of the costs per square foot of operating expenses not required to maintain the space. Said reduction must occur after the Company gives 30 calendar days prior notice to the Lessor, and must continue in effect until the Company occupies the premises or the Lease expires or is terminated.

#### **19. MEASUREMENT FOR PAYMENT**

When space is offered and accepted, the space will be mutually measured upon substantial completion and delivery. Payment will be made on the basis of actual measurements; however, payment will not be made for delivered space which is in excess of the maximum square footage solicited. The annual rent will be calculated by multiplying the annual square footage rate times square footage.

#### **20. TAX ADJUSTMENT**

(a) The Company shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its Lease commences (base year). The amount of payment will be based upon submission of a proper invoice, including paid tax receipts/statements/bills, from the Lessor to the Company. Payment will be a lump sum and become due on the 30th after receipt of the invoice by the Company, or the anniversary date of the Lease, whichever is later. The Company will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Lease commences, the base year will be the first year of a full assessment.

(b) The Company's share for the tax increase will be based on the ratio of the square feet occupied by the Company to the total rentable square feet in the building. If the Company's Lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Company occupied space. The payment will not include penalties for nonpayment or delay in payment. If there is any variance between the assessed value of the Company's space and other space in the building, the Company may adjust the basis for determining its share of the tax increase.

(c) The Company may contest the tax assessment by initiating legal proceedings on behalf of the Company and the Lessor or the Company alone. If the Company is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice by the Company. The Company shall reimburse the Lessor for all costs and shall execute all documents required for the legal proceedings. The Lessor shall agree with the accuracy of the documents. The Company shall receive its share of any tax refund. If the Company elects to contest the tax assessment, payment of the adjusted rent shall become due on the first workday of the month following conclusion of the appeal proceedings.

(d) In the event of any decreases in real estate taxes occurring during the term of occupancy under the Lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

#### **21. LESSOR'S SUCCESSORS BOUND**

The terms and provisions of this Lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

#### **22. ASSIGNMENT OF CLAIMS**

(a) The Lessor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this Lease to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this Lease, payments to an assignee of any amounts due or to become due under this Lease shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable

under this Lease, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Lease.

(c) The Lessor shall not furnish or disclose to any assignee under this Lease any classified document (including this Lease) or information related to work under this Lease until the Company authorizes such action in writing.

### **23. SUBORDINATION, NONDISTURBANCE AND ATTORNMEN**

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Company's access to the premises and full use and enjoyment thereof in accordance with the provisions of this Lease. The Company agrees, in consideration of the warranties and conditions set forth in this clause, that this Lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this Lease. Company agrees, however, within twenty (20) business days next following the Company's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this Lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Company under this Lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Company under this Lease so long as the Company is not in default under this Lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this Lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Company promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Company will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this Lease, so as to establish direct privity of estate and contract between Company and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the Lease had initially been entered into between such purchasers or transferees and the Company; provided, further, that the Company and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this Lease, or other writings, as shall be necessary to document the foregoing relationship.

### **24. STATEMENT OF LEASE**

(a) The Company will, within thirty (30) days next following the Company's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that

- (1) the Lease is in full force and effect;
- (2) the date to which the rent and other charges have been paid in advance, if any; and
- (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

- (1) That they are based solely upon a reasonably diligent review of the Company's Lease file as of the date of issuance;
- (2) That the Company shall not be held liable because of any defect in or condition of the premises or building;
- (3) That the Company does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and
- (4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government and Company officials.

### **25. NO WAIVER**

No failure by either party to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

### **26. INTEGRATED AGREEMENT**

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

### **27. MUTUALITY OF OBLIGATION**

The obligations and covenants of the Lessor, and the Company's obligation to pay rent and other Company obligations and

covenants, arising under or related to this Lease, are interdependent. The Company may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this Lease. No setoff pursuant to this clause shall constitute a breach by the Company of this Lease.

## **28. RESOLUTION OF DISPUTES**

(a) Lessor and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Lease through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Cost shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs.

(b)(1) Where Lessor is a State agency, such as an **Educational Institution**, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues. (2) In all other cases, subject to (b)(3) below, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division; (3) provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.

(c) The parties agree that, subject to (b)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal law. To the extent there is no Federal law, Tennessee state law shall apply.

(d) There shall be no interruption in the performance of the work, and Lessor shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Lessor and its sub-tier subcontractors.

## **29. BANKRUPTCY**

If Lessor enters into any proceeding relating to bankruptcy, it shall give written notice by certified mail to the Company within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed and the identity and location of the court.

## **30. IDENTITY VERIFICATION OF PERSONNEL**

(a) The Company reserves the right to verify identities of personnel with routine access to Company space. The Lessor shall comply with the agency personal identity verification procedures below that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended.

(b) The Lessor shall insert this paragraph in all subcontracts when the subcontractor is required to have physical access to a federally controlled facility or access to a federal information system.

(c) Lessor compliance with subparagraphs 1 through 4 below will suffice to meet the Lessor's requirements under HSPD-12, OMB M-05-24, and FIPS PUB Number 201.

(1) The Company reserves the right to conduct background checks on Lessor personnel and contractors with routine access to Company leased space.

(2) Upon request, the Lessor shall submit completed fingerprint charts and background investigation forms for each employee of the Lessor, as well as employees of the Lessor's contractors or subcontractors, who will provide building operating services requiring routine access to the Company's leased space for a period greater than 6 months. The Company may also require this information for the Lessor's employees, contractors, or subcontractors who will be engaged to perform alterations or emergency repairs in the Company's space.

(3) The Lessor must provide Form FD-258, Applicant Fingerprint Card (available from the Government Printing Office at <http://bookstore.gpo.gov>), and Standard Form 85P, Questionnaire for Public Trust Positions, completed by each person and returned to the Subcontract Administrator (or the Subcontract Administrator's designated representative) within 30 days from receipt of the forms. Based on the information furnished, the Company will conduct background investigations of the employees. The Subcontract Administrator will advise the Lessor in writing if an employee fails the investigation, and, effective immediately, the employee will no longer be allowed to work or be assigned to work in the Company's space.

(4) Throughout the life of the lease, the Lessor shall provide the same data for any new employees, contractors, or subcontractors who will be assigned to the Company's space. In the event the Lessor's contractor or subcontractor is subsequently replaced, the new contractor or subcontractor is not required to submit another set of these forms for employees who were cleared through this process while employed by the former contractor or subcontractor. The Lessor shall resubmit Form FD-258 and Standard Form 85P for every employee covered by this paragraph on a 5-year basis.

## **31. INCORPORATION BY REFERENCE**

(a) The clauses listed in paragraph (c) below are incorporated herein by reference. These clauses apply as if they were set forth in their entirety. The texts of FAR clauses are available at <https://www.acquisition.gov/far/>, and the texts of DEAR clauses are available at <http://management.energy.gov/DEAR.htm>. Except as provided in paragraph (b) below, in the listed clauses "Contractor" means Lessor, "Contract" means this Lease, "Government" means the Company, and

"Contracting Officer" means the Company employee administering this Lease.

(b) "Government" retains its meaning in (1) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (Sept 2005); and (2) Paragraph (d) of DEAR 970.5232-3, Accounts, Records, and Inspection (Dec 2000).

(c)(1) The following clauses are incorporated by reference:

FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (July 2005)

FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999)

FAR 52.222-26 Equal Opportunity (Mar 2007) (The required poster is available at:

<http://www.dol.gov/compliance/topics/posters.htm>.)

FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)

FAR 52.222-50 Combating Trafficking in Persons (Feb 2009)

FAR 52.223-6 Drug-Free Workplace (May 2001)

DEAR 952.203-70 Whistleblower Protection for Contractor Employees (Dec 2000)

DEAR 970.5232-3 Accounts, Records and Inspection (Aug 2009), paragraphs (a) through (g) and (h) with paragraph (h)(1) amended by adding "or subcontractor's" after contractor's and by adding "and to interview any current employee regarding such transactions" after "hereunder." "Authorized representative" under paragraph (h)(1) includes the Inspector General.

(2) The following clauses are incorporated if this Lease exceeds \$100,000:

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sept 2006) (applicable to Agreements in excess of \$150,000)

FAR 52.203-7 Anti-Kickback Procedures (July 1995)

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Sept 2007)

FAR 52.215-2 Audit and Records - Negotiation (Oct 2010) including Alternate II for state and local governments, educational institutions, and other nonprofit organizations (applicable to Agreements in excess of \$150,000)

FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)

FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)

Utilization of Small Business Concerns (Company – Mar 2009)

(3) The following clauses are incorporated if this Lease exceeds \$500,000:

DEAR 970.5226-2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)

Displaced Employee Hiring Preference (Company – July 2006)

(4) The following clauses are incorporated if this Lease exceeds \$550,000:

FAR 52.219-9 Small Business Subcontracting Plan (Apr 2008)

(5) The following clauses are incorporated if this Lease exceeds \$700,000:

FAR 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data (Oct 2010)

FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Oct 2010)

FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (Oct 2010)

FAR 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (Oct 2010)

(6) The following clauses are applicable to certain Leases:

**A. BUSINESS ETHICS AND CONDUCT**

If this Agreement exceeds \$5 million and the performance period exceeds 120 days, this Agreement incorporates by reference FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Dec 2008).

**B. DISPLAY OF HOTLINE POSTERS**

If this Agreement exceeds \$5 million, unless performance is entirely outside the United States, this Agreement incorporates by reference FAR 52.203-14 Display of Hotline Poster(s) (Dec 2007). Required posters may be obtained from the U.S. Department of Energy Office of Inspector General at <http://www.ig.energy.gov/hotline.htm>.

**C. EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTORS**

Notwithstanding any other provisions of this Agreement, if the estimated or actual amount of the Agreement exceeds \$10 million, Company must have written evidence of Seller's compliance with the equal opportunity requirements of FAR 52.222-26 Equal Opportunity.