

(10/21/2013)

CORAL – DRAFT ORNL Lease Agreement

LEASE AGREEMENT NO. _____

LEASE AGREEMENT between **UT-BATTELLE, LLC** (“Company”), and _____, (“Lessor”)

The Company acting under its Prime Contract No. DE-AC05-00OR22725 with the United States Department of Energy (DOE) issues this Agreement.

Any inconsistencies shall be resolved in accordance with the following descending order of precedence:

1. Lease Agreement No. _____
2. Exhibit 9 – Technical Data (June 2011)
3. General Terms and Conditions – Commercial Items (CI September 2013)
4. Attachment A, Technical Specification (to be established as a result of negotiations)
5. Attachment B, Acceptance Test Plan (to be established as a result of negotiations)

ARTICLE I. DEFINITIONS

The following terms shall have the meanings below:

“Acceptance” and “Accepted” means Product has successfully completed the functional and performance system test that Lessor along with Company shall conduct in accordance with the Acceptance Test Plan, Attachment B.

“GPU” means graphics processor unit.

“Install,” “Installation,” and “Installed” means that hardware, software, or a System has been set-up in accordance with Lessor’s published installation specifications and is ready for use by Company.

“Maintenance” and “Hardware and Software” means Lessor support services provided under this Agreement pursuant to Attachment A, Technical Specification.

“CORAL System”, “System”, means the products specified in Attachment A, Technical Specification.

“Payment Start Date” means the Acceptance date of the System.

“Payment Term” means period of time during which the Company makes lease payments to the Lessor or its assignee.

“Product” means the System leased or purchased and/or the software licensed under this Agreement.

“System Analyst” means Lessor support services provided under this Agreement pursuant to Attachment A, Technical Specification.

“TBD” means the issue/item has yet to-be-determined.

Note: This section will be updated as required during negotiations.

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ARTICLE II. SCHEDULE

A. Agreement Type

This is a Lease- to- Own Plan [“LTOP”] lease for the System.

B. Description

The Lessor shall provide all necessary materials, labor, equipment, and facilities (except as specified herein to be furnished by the Company) necessary for the satisfactory and timely performance of the following Agreement line items.

Item 1

Item 1 will provide for a Computing Resource in accordance with the Technical Specification, Attachment A. Item 1 shall have a principal price of \$_____ with a lease cost of \$_____. The Payment schedule including interest payment for full term of the lease is shown in Attachment D, Payment Table 1. Lease payments shall be made in accordance with Payment Table 1. Payment terms shall be based on a principal amount of \$_____ amortized over a _____ month period at an interest rate of _____ percent at the date of the Final Acceptance for Item 1.

Item 2

Item 2 will provide for hardware and software maintenance for Item 1 in accordance with the sections 11.1 and 11.2 of Technical Specification, Attachment A. The period of performance will begin at Final Acceptance of Item 1 and going through 09/30/____. The pricing is as follows:

Maintenance	Monthly Price \$_____	Total \$_____
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Item 3

Item 3 will provide for system analyst support for Item 1 in accordance with 11.5 of the Technical Specification, Attachment A. The period of performance will begin at Final Acceptance of Item 1 and going through 09/30/____

System Analyst	Monthly Price \$_____	Total \$_____
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C. Funding

This Agreement shall be incrementally funded. Funding is subject to annually appropriated funds. The total estimated cost to Company for performance of this Agreement is \$_____. The amount currently allotted to this Agreement for payment is _____.

D. Payment

1. The Lessor shall not submit an invoice for payment until the System, including data and materials certification, if required by the Agreement, has been inspected and accepted by the Company in accordance with the provisions of this Agreement. The Company will notify the Lessor in writing immediately upon acceptance. The Company will advise the Lessor that they are to invoice the Company for the purchase price or in accordance with Attachment D, Payment Table 1. Time, with respect to terms of payment, shall begin upon the receipt by the Company of a proper invoice.

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Early Payment: Company shall have the option to make advanced lease payments at any time during the Lease Term and shall receive a credit towards the Lease Payments due at the end of the Lease Term. The credit shall be determined by Lessor and provided to Company. Upon agreement of the credit amount by Lessor and Company, the advanced Lease Payment may be made. This will also apply to monthly hardware and software maintenance as described in Article VI, Options.

2. Taxes

(a) Personal Property Taxes

Lessor shall pay for Personal Property Taxes. Company shall reimburse Lessor for such taxes within 30 days of the submission of the tax assessments provided to Lessor by Roane County and the City of Oak Ridge. Personal Property Taxes shall not be a part of the lease payments.

Lessor agrees that while the legal incidence of the personal property tax applicable to the leased property is on the Company, Lessor shall pay such taxes to the appropriate taxing authority in accordance with the rules and statutes for property tax reporting of leased personal property administered by the State of Tennessee.

(b) Sales and Other Taxes

All other taxes except income taxes and other Governmental charges based on or measured by the charges set forth in this Agreement, or based on the sale or lease of the System, its use, or any Services provided herein, now or hereafter imposed by any Government authority, including but not limited to Sales, Use, and Gross Receipts taxes, will be paid by Company. Company represents that it holds a Tennessee direct pay permit for Use Tax and will provide the Lessor with a copy.

E. Invoicing

The Lessor must submit separate invoices for payments associated with the lease, maintenance, and system analyst. Payment terms are Net 30 days.

Agreement No. _____ shall be referenced on all invoices.

Invoices shall be submitted in triplicate to:

UT-Battelle, LLC
Attention: Accounts Payable
Post Office Box 2308
Oak Ridge, Tennessee 37831-6436
(865) 576-6343 Fax
ornlap@ornl.gov , Email address

Electronic Funds Transfer (EFT). Electronic Funds Transfer (EFT) expedites payments to subcontractors and is our preferred method of payment. For information about EFT, visit <http://www.ornl.gov/adm/contracts/eft.shtml>.

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Vendor Account Status System. For detailed payment information or inquiries concerning invoices and payments, visit the UT-Battelle, LLC Accounts Payable Vendor Account Status System(VASS) at <http://www.ornl.gov/adm/ap/> or telephone (865)241-4151.

F. Delivery Schedule

Delivery of the Item 1 shall begin by _____ and be completed on or before _____. Acceptance Testing shall be completed _____.

G. Transportation Terms

The FOB point shall be “Destination”. The Lessor is responsible for all shipping charges.

H. Transfer of Title

Lessor shall retain title to the System until Company has made all payments required under the terms of this Agreement. Upon issuance of the final lease payment, title shall immediately transfer to DOE. If this Agreement is terminated during the Payment Term, then title to the System shall remain with Lessor unless Company exercises its rights to purchase the System.

ARTICLE III. AGREEMENT CONDITIONS

A. Risk of Loss

Lessor assumes all risk of loss of or damage to the Products until Acceptance, except for loss of or damage to the Products resulting directly from Company’s negligence. Company assumes all risk of loss of or damage to the Products upon Acceptance. Company will be responsible for damage to the Products caused by its negligence if such damage occurs following installation.

B. Availability of Funds

Lessor understands that funding of the Agreement is subject to the future availability of annually appropriated, apportioned, and allotted funds under Contract DE-AC05-00OR22725 or a successor prime operating contract and that this Agreement must be made and administered consistent with 31 U.S.C. 1341 and 41 U.S.C. 11. Accordingly, funding of this Agreement shall be provided on a fiscal year basis, subject to a determination by the Company that sufficient appropriated and apportioned funds are available to be allotted and available for payment under this Agreement. Such funds shall be applied to continue the Agreement, subject to the availability of funds. In the event that no funds are appropriated, apportioned, and allotted or a determination is not made by the Company that sufficient funds are available to continue this Agreement and then the Company may cancel the Agreement with a 14 calendar day notice to the Lessor. The cancellation shall be at no cost the Company. If funding previously available under this Agreement is withdrawn during the current fiscal year as a result of budgetary action by the Office of Management and Budget or Congress, the Company will notify the Lessor of this occurrence and may cancel the Agreement upon a 14 calendar day notice to the Lessor. The cancellation shall be without penalty to the Company. Upon cancellation of the Agreement and upon written direction from the Lessor, the Company shall deliver the Item 1 to the Lessor within the Continental United States consistent with the terms and conditions of this Agreement.

C. Return of System

In the event Company is required to return the System under the terms of this lease, Company shall, upon or after the expiration of the lease shall remove and return the Item 1 at Company's expense,

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appropriately package and ship the System to a location within the continental United States designated by Lessor. The System shall be returned in the original condition as delivered, with the exception of ordinary wear and tear from the proper use of the System.

D. No Setoff

Company agrees that, upon acceptance of the System, its obligation to pay the Lease Payments shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment whatsoever, due or alleged to be due to, or by reason of, any past, present, or future claims which Company may have against Lessor, the manufacturer of the System, any assignee of the Lessor or against any person for any reason whatsoever.

E. Assignment of Payments

Lessor may assign its rights to any and all monies due or to become due under the Agreement to a bank, trust company or other financing institution. Any such assignment shall be effective when the Assignee files written notice of the assignment, together with a true copy of the instrument of assignment, with Company. Company agrees to acknowledge such notice to evidence such assignment, and agrees to make payment of any and all monies due or to become due under the Agreement in accordance with the terms of such assignment.

F. Attachments

Company agrees not to add attachments, features or devices to the System furnished under this Agreement or make changes or alterations to the System without notifying Lessor in each case. Company agrees to remove any alterations or attachments before the System is returned to Lessor and agrees to pay Lessor for any charges to restore the System to its original condition (normal wear and tear excluded.)

G. Authorized Movement

Upon written notification to Lessor, Products may be transferred from one Company or DOE location to another at any time during the Lease Term. Authorized movements shall not affect lease payments or warranty provisions.

H. Technical Direction

The clause, Technical Direction (Jan 2006), is incorporated by reference and amended as follows:
"Performance under this Agreement is subject to the technical direction of the Company's Technical Project Officer (TPO):"

TPO Name: James H. Rogers
TPO Telephone #: 865-576-2978
TPO Email Address: jrogers@ornl.gov

I. Environmental Safety and Health

The following shall apply for all work performed on-site at Oak Ridge National Laboratory:
Site Access Requirements

Lessor employees having unescorted Company site access shall complete the Company's "ORNL Site Access Training." Otherwise, escort by an individual who has completed the training program is required.

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During periods of active construction, the Lessors/subcontractors designated representative shall be present on the construction site. Lessors/ subcontractors designated representative must make frequent and regular inspections of the construction worksite to identify any instances of noncompliance with project ES&H requirements.

The Lessor/subcontractor must submit the following documents to UT-Battelle:

1. An activity hazard analysis of the affected work must be submitted to the UT-Battelle construction manager for review/approval prior to commencement of affected work. Such analysis must:

- Identify foreseeable hazards and planned protective measures
- Address further hazards revealed by supplemental site information (e.g., site characterization data, as built drawings);
- Prove drawings and/or other documentation of protective measure for which applicable Occupation Safety and Health Administration (OSHA) standards require preparation by a Professional Engineer or other qualified professional;
- Identify competent persons required for workplace inspection of the construction activity, where required by OSHA standards; and
- Address hazards identified in the Technical Specification and this Agreement.

2. A written construction project safety and health plan that addresses how Lessor will implement the safety and health requirements of the Technical Specification, this Agreement, the Company's DOE-approved Worker Safety and Health Program, and applicable laws and regulations. The plan shall also:

- Have the level of detail commensurate with the size, complexity and risk level of the construction project.
- Designate the individual responsible for in-site implementation of the plan and has authority to act on behalf of the Lessor/subcontractor. The plan shall state their qualifications.
- Provide a list of those project activities for which subsequent hazard analyses are to be performed.

Prior to commencement of any work, the Lessor/subcontractor must either:

1. Accept and agree to work pursuant to UT-Battelle's DOE approved Worker Safety and Health Program (available at website: www.ornl.gov/adm/contracts/ornl_851wsh.htm); or

2. Submit its own DOE-approved Worker Safety and Health Program that is compliant with 10 CFR 851 and DEAR 970.5223-1 to the UT-Battelle Subcontract Administrator for review and approval.

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Electrical Hazards

The Lessor shall perform service and maintenance activities employing work practices required for electrical safety by the Occupational Safety and Health Administration (OSHA) in 29 CFR 1910 Subpart S and NFPA 70E, Standard for Electrical Safety in the Workplace 2004 Edition.

Maintenance, testing, startup, and repair activities involving the potential for contact with exposed energized electrical circuits or parts shall be performed with the equipment de energized unless this is infeasible because of diagnostic or operational limitations. To control potential electrical hazards, system components shall be disconnected from their electric energy source(s), with the disconnecting means (power cord and plug, safety switch, etc.) under the control of the service Lessor. All stored electrical energy which might endanger personnel through contact (high amperage batteries, capacitors and high capacitance elements, high energy electromagnets, etc.) shall be discharged or safely isolated from the circuit.

Work On or Near Energized Parts Advance Approval and Pre-job Meeting

Prior to working on or near any energized parts, Lessor shall meet the requirements in the Terms and Conditions to obtain, through the Technical Project Officer (TPO), or if there is none, the Subcontract Administrator, the advance approval of the responsible Company Level II Manager, of Lessor's plans and Proposed activities. The TPO has responsibility for providing the subcontractor with approval prior to working on or near any energized part. The TPO responsibility includes ensuring a pre-job dialogue on job hazards and controls between the service subcontractor and TPO and/or Company electrical SME.

Lockout/Tagout of Hazardous Energy (electrical, pneumatic, mechanical, chemical [gases])

Lessor shall comply with the requirements of 1910.147 for servicing and maintenance when the unexpected energization or release of stored energy could cause injury.

Personal Protective Equipment

Any personal protective equipment (PPE) required for use of the chemicals shall be supplied by the Lessor. Lessor personnel shall be trained for the required PPE in accordance with 29 CFR 1910.132, Personal Protective Equipment. Lessor personnel shall wear safety glasses with side shields at all times during work activities with potential for eye injury unless a higher level of eye protection is required for specific hazards. Lessor employees shall wear clothing suitable for the environmental and work conditions. The minimum shall be short sleeve shirts, long trousers, and leather or other protective work shoes or boots with protective toes when there is potential for foot injury.

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The Lessor shall comply with the requirements of 29 CFR 1910.22 and 1910.23.

The Lessor shall comply with the requirements of 29 CFR 1910 Subpart P # Hand and Portable Powered Tools and Hand-Held Equipment.

The Lessor shall comply with all manufacturer's requirements and recommendations.

Work requiring the control of sources of hazardous energy shall follow the applicable OSHA and NFPA requirements, e.g. 29 CFR 1910.147, 1910.269, 1910.333 and NFPA 70E.

Planned work involving forms/sources of hazardous energy, e.g. electrical, pneumatic, hydraulic, mechanical, etc. shall be addressed by a procedure that specifies how those forms of hazardous energy will be properly controlled by lockout/tagout (LO/TO). The Lessor shall provide a copy of their energy control procedure to the Subcontract Administrator and receive approval prior to starting work.

Prior to beginning work, the following requirement(s) shall be observed (as applicable to the task):

- 1) Lockout required by an outage of a portion of the [external] electrical distribution system shall be coordinated by ORNL Utilities. The Lessor will have ORNL lockout/tagout training or have their own approve program reviewed and approved by the Company.
- 2) Lockout of any permanently wired component, equipment, or system served by a facilities internal distribution system must be coordinated with the Complex Facility Manager or their designated representative. The need to de-energize a disconnect switch or circuit breaker is a typical example of this. Note: Does not apply to equipment that is supplied exclusively by flexible cord and plug.
- 3) Method for verifying energy isolation must protect workers in accordance with applicable 70E requirements (see Electrical section).

The Lessor shall comply with the program requirements found in 29 CFR 1910.95 Occupational Noise Exposure. The Hearing Conservation Program shall be made available to the Company upon request.

Use the American Conference of Governmental Industrial Hygienists (ACGIH) TLVs for exposure limits. Use the ACGIH exchange rate for monitoring purposes.

The Lessor shall comply with the requirements of DOE-STD-1090-2004; Hoisting and Rigging Standard (Formerly Hoisting and Rigging Manual) and 29 CFR 1910.178

The manual is available at - <http://www.hss.energy.gov/NuclearSafety/techstds/standard/std1090-04/toc.html>

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The Lessor must obtain an approved ORNL Penetration Permit (ORNL-648 form) from the Technical Project Officer prior to beginning work. All work must be conducted under an ORNL approved penetration permit integrated into the work control process.

The Lessor shall incorporate the penetration permit into the appropriate work control process for the work (e.g., maintenance work package or activity hazard analysis or AHA). Mechanisms shall be in place to ensure the permit information and special work requirements are flowed down through all Lessor levels to the person(s) performing the penetration work.

Ladder Safety

Ladders shall be used, inspected, and maintained in accordance with 29 CFR 1910.25 Portable wood ladders and 29 CFR 1910.26 Portable metal ladders, and the manufacturer's instructions. Ladders shall be used only for the purposes for which designed and must be maintained in good usable condition at all times.

J. Key Personnel

(a) The following personnel are considered to be essential to the work being performed hereunder:

_____, Project Manager

(b) The Lessor must notify the Company before diverting any listed person(s) to another program, providing justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made without the consent of the Company; provided, that the Company may ratify a diversion in writing and the ratification shall constitute consent. The list of key personnel may be revised by mutual agreement during the period of this Agreement.

K. Key Subcontractor

For purposes of this clause a Key Subcontractor is a Subcontractor performing a significant portion of the work under this Agreement, relative to cost or technical function. The Key Subcontractor's performance is critical to the successful completion of the Lessor's work requirements. As a Key Subcontractor the Company may be interested in performing on-site Quality surveys in order to assess the capability and progress of their portion of the work. The Key Subcontractor(s) specified below:

are considered to be essential to the work being performed hereunder. The subcontract award to the Lessor is based on use of the Key Subcontractor(s) for the work specified above. Prior to diverting any of the specified work to another Subcontractor, the Lessor shall notify the Company reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made.

L. GO/NO-GO Decision Clause

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NOTE: The following GO/NO-GO Decision clause is a DRAFT/EXAMPLE. The final version of the clause will be adapted as needed and included in the final subcontract

A. GO/NO-GO Decision

1. The Computing Resource, Item 1, is described in the Technical Specification.
2. Upon completion of Section _____ of the Technical Specification, the Lessor and Company shall consider the _____ (the number is yet to be determined) major decision points.
 - a. The results of the Lessor's work on research and development Subcontract _____ awarded by Lawrence Livermore National Security, LLC (LLNS), will form the basis for a GO/NO-GO decision to build Item 1.
 - b. A GO decision will require the Company and Lessor to revise the Technical Specification by written modification of this Subcontract. See Paragraphs B, C, and D, below and Section _____ (TBD) of the Technical Specification.
 - c. A commitment by Company and the Lessor to acquire parts for Item 1 after review and approval by the Company.

If all three decisions are affirmative, Company will amend this Subcontract to reflect the terms and conditions agreed upon in connection with the decision to build Item 1.

3. **The following is an EXAMPLE only. The purchase of parts is an example of what may be included in this section. -**

EXAMPLE: Company may authorize the Lessor, in writing, to acquire the parts necessary to build Item 1, provided the GO/NO-GO decision above is GO and after the Lessor has notified Company it is ready to acquire the Item 1 parts. _____ Supercomputer parts include, but are not limited to, individual _____ (TBD) (**Examples may include:** processor and interconnect ASICs, memory chips or DIMMs, PCBs, optical component cables, empty racks, cooling equipment, power supplies, fans, and fully or partially integrated built racks of parts, etc.).

The express written approval of the Company's Subcontract Administrator is required before the Lessor is permitted to acquire the Item 1 parts. (End of EXAMPLE)

4. **The following is an EXAMPLE only. Memory pricing is just one example of what may be included in this section.**

EXAMPLE: Company and the Lessor agree to share the memory price risk for the Item 1. In exchange for this memory price risk sharing, the Lessor agrees to disclose actual memory cost information (i.e., the sum of the actual cost the Lessor will pay its supplier for memory and the Lessor's overhead recovery charges) to Company prior to purchasing Item 1 memory parts. The fixed price of this Subcontract is based on a total of TBD TebiBytes (TiB) of DDR4 SDRAM for CORAL HPC at the total estimated price of \$_____ (TBD), or \$TBD per GibiByte (GiB). Similarly, the fixed price of this Subcontract is based on a total of TBD TeibiBytes (TiB) of

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NVRAM for OLCF-4 at the total estimated price of \$TBD, or \$TBD per GibiByte (GiB). If the actual memory price is more than ___% above or below this estimate when the SDRAM and NVRAM need to be purchased to build Item 1, the parties agree to negotiate a mutually acceptable memory price estimate and either change the total fixed price of this Subcontract accordingly or change the OLCF-4 system deliverables accordingly. If Company obtains substantive information indicating the Lessor's memory pricing may not represent a fair and reasonable market price, Company will share this information with the Lessor. If Company and the Lessor cannot agree on an equitable change to the Subcontract, Company may elect, by written notice to the Lessor within 14 days, to purchase the SDRAM and/or NVRAM itself and furnish it to the Lessor. (End of EXAMPLE)

B. Technical Specification Target Requirements

Company and Lessor recognize that the production and performance of Item 1 will be tied directly to the results of the Lessor's work on research and development Subcontract _____ awarded by LLNS. Since research results are not predictable, and since the actual performance of future products cannot be defined in the present, the Technical Specification defines the requirements for the Lessor's performance in terms of targets. These targets are not the usual mandatory (minimum or maximum) requirements that are typically used in a Technical Specification. Targets are those performance achievements that Company and the Lessor reasonably believe the Lessor could approach, achieve, or exceed, depending upon the results of the research.

C. Technical Specification Performance Assessment

Company and Lessor agree that the Lessor's performance under the Technical Specification will be measured by an aggregate assessment of the level of achievement of the system as a whole rather than an assessment of performance of each target requirement individually. Company will assess the Lessor's performance on the system as a whole after the Lessor completes work on the critical subsystems and provides performance results to Company. At its discretion, Company may use a numeric or subjective assessment method depending upon the nature of the target requirement being assessed. Credits and debits will be reasonably assigned by Company in proportion to the level of achievement relative to the target requirement. Company will give assessment credits if the performance results exceed the target requirement, will give a neutral assessment if the target is merely met, or will give assessment debits if the performance results do not meet the target. Company will then aggregate the individual assessments into an overall assessment, balancing the credits and debits in a reasonable manner. These critical subsystem and overall system assessments, along with the individual assessments, will be promptly and continually shared with the Subcontractor.

Since Company has agreed to use a Technical Specification with target requirements rather than traditional performance requirements, Company is accepting some of the risk normally assumed by Lessor under a fixed price subcontract. As consideration for accepting this increased level of risk, the Lessor agrees that Company shall have the sole discretion to assess the Lessor's performance relative to each target requirement, the critical subsystems identified in the Technical Specification, and the system as a whole. This does not, however, infringe upon the Subcontractor's rights under the clause in the GENERAL TERMS and CONDITIONS entitled RESOLUTION OF DISPUTES.

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D. Technical Specification Conversion from Target Requirements to Traditional Requirements

Company and the Lessor agree that certain target requirements in the Technical Specification will be converted to traditional mandatory requirements after the results of research and development Subcontract _____ awarded by LLNS. These conversions shall be defined by the mutual agreement of Company and the Lessor and implemented by a written modification of this Subcontract.

E. Source Code

The Lessor shall deliver source code for software delivered with the Item 1, which may include the ability of Company to build software binaries that reproduce Lessor delivered binaries that can be installed on Item 1, as mutually agreed upon by the parties. The source code shall allow Company to assist the Lessor in performing software maintenance of the Item 1.

F. Obligations of the Parties

Company and Lessor agree that this Subcontract involves the development of cutting-edge technology under aggressive schedules. Company and the Lessor agree (i) that the Lessor shall use reasonable efforts to deliver in accordance with the requirements and schedules set forth in this Subcontract, and (ii) to reasonably consider limitations that may occur in meeting obligations under this Subcontract. If the Lessor is unable to meet its performance obligations, then Company and the Lessor hereby agree to negotiate the Technical Specification and the Subcontract price, if necessary, to reflect changes to the Lessor's performance obligations. Company and the Lessor agree to use this process to address performance issues before resorting to any rights or remedies available by way of the DISPUTES or the TERMINATION clauses of the GENERAL TERMS AND CONDITIONS.

G. Unwind

1. The technical checkpoints identified within Technical Specification Paragraph _____ (TBD) shall be used to review technical progress and schedules, which may be revised. Within 15 days after completion of a technical checkpoint, either party may decide to cancel its participation in the Item 1 work by providing written notice of its decision to the other party. If no such written notice is received by either party, then the Lessor's obligation to proceed hereunder shall continue. Cancellation under this Paragraph shall not constitute a termination for default or convenience but, rather, a voluntary cancellation of the obligations of the work. In the event either party elects to invoke the cancellation right prescribed by this Paragraph, Company shall have no obligation to pay for milestones it has not accepted, and the Lessor shall have no obligation either to perform work prescribed by any remaining milestones and their associated Technical Specification sections, or to make any payments to Company.

2. If exercised, the foregoing cancellation right shall constitute the parties' exclusive remedy and shall be subject to the following limitation. In the event of cancellation by Company after the Lessor has acquired the Item 1 parts, Company shall pay the Lessor for the Item 1 parts and the Lessor shall provide Company with reasonable documentation supporting the cost of the Item 1 parts and shall also deliver to Company any Item 1 parts not already delivered to Company under

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the Technical Specification. Company and the Lessor agree that Company's obligation to pay for the Item 1 parts hereunder shall not exceed \$ _____ (TBD). In the event of cancellation by the Lessor after the Lessor has acquired the Item 1 parts, Company's sole and exclusive obligation for payment hereunder is expressly limited to milestones it has accepted. In this event, Company and the Lessor shall mutually agree upon return of any deliverables not accepted by Company or delivery of Item 1 parts to Company in proportion to the payments made by Company for completed milestones.

M. Subcontract Administration

The Company's Subcontract Administrator for this Agreement is William R. Besancenez. The Company's Subcontract Administrator is the only person authorized to make changes in the requirements of this Agreement or make modifications to this Agreement, including changes or modifications to the Agreement. The Lessor shall direct all notices and requests for approval required by this Subcontract to the Company's Subcontract Administrator at the address listed below:

Subcontract Administrator Name: William R. Besancenez
Subcontract Administrator Telephone #: 865-576-1538
Subcontract Administrator Email Address: besancenezwr@ornl.gov

Any notices and approvals required by this Agreement from the Company to the Lessor shall be issued by the Company's Subcontract Administrator.

N. Company Right to Audit

The Company shall have the right to examine the records of the Lessor as necessary to assure that the prices for the items under this Agreement do not exceed those charged by the Lessor to any other customer purchasing the same items in like or comparable quantities.

ARTICLE IV. MAINTENANCE, SYSTEM ANALYST, AND ASSOCIATED OPTIONS

Lessor shall provide Maintenance services in accordance with Attachment A, Technical Specification. Company shall purchase and keep in effect Maintenance for Item 1. Company may exercise one or more successive one year options for Maintenance and or the System Analyst under Article V.

ARTICLE V. OPTIONS FOR MAINTENANCE and SYSTEM ANALYST

The following options cover hardware and software maintenance along with system analyst support.

Note: Options for out-year maintenance and system analyst support will be added in this section.

ARTICLE VI. OPTION, THIRD PARTY LEASING

The Company may exercise the option to lease for line item 1 described in Article III of this Agreement from a third party.

In the event the Company should choose to do so, the following clause will be incorporated
If the Company exercises this option, it shall be exercised by written notice to the Lessor not later than _____ or at a time mutually agreed upon by the parties.

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Third Party Leasing

Lease- to- Own Agreement between Company and _____ (Lessor) will provide for payment to the Lessor for _____ (Item 1) following the acceptance described below, which will signify transfer of title for the equipment associated with _____(Item 1) to the Lessor. Company will provide Lessor with appropriate documentation signifying acceptance.

Title to the equipment identified in _____(Item 1) purchased under this Agreement shall pass, upon payment, directly to the Lessor, and thereafter to the US Department of Energy under the provisions of the Lease- to- Own Agreement (LTO). Lessor shall provide a bill of sale to Lessor upon payment for the equipment to evidence passage of title to Lessor.

ARTICLE VI. CONTENTS OF AGREEMENT

The following articles and documents are made a part of this Agreement and incorporated herein by reference as if they were stated in their entirety. Items 4 and 5 below are available at <http://www.ornl.gov/adm/contracts/documents.shtml>.

1. Attachment A, Technical Specification
2. Attachment B, Acceptance Test Plan
3. Attachment D, Payment Table 1 – Payment Schedule for Item 1(Yet to be established).
4. Terms and Conditions – Commercial Items (CI September , 2013)
5. Exhibit 9 – Technical Data (June 2011)

THE PARTIES, INTENDING TO BE LEGALLY BOUND, have executed this Agreement as of the dates set forth below.

UT-BATTELLE, LLC

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____