Attachment B – Intellectual Property Requirements

1. AUTHORIZATION AND CONSENT

a. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

b. The Recipient agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

2. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

a. The Recipient 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 Recipient 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 under this contract, the Recipient shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Recipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Recipient has agreed to indemnify the Government.

c. The Recipient agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

3. PATENT INDEMNITY

a. The Recipient shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

b. This indemnity shall not apply unless the Recipient shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have

been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Recipient;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Recipient, unless required by final decree of a court of competent jurisdiction.

4. PATENT RIGHTS

a. Definitions.

Invention means any invention or discovery which Recipient believes in good faith 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.).

Made when used in relation to any invention means the conception and reduction to practice (whether actual or constructive) of such invention.

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 1954 (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.

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.

Subject invention means any invention of the Recipient conceived and reduced to practice (whether actual or constructive) in the performance of work under this award, 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 award performance.

Intellectual property means patents, trademarks, copyrights, mask works, trade secrets, and other forms of comparable intellectual property that are protected by federal law.

b. Allocation of Principal Rights.

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention, subject to the provisions of this Patent Rights. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient.

(1) The Recipient will disclose each subject invention to DOE within six months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the 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 Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying 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.

(3) The Recipient will file its initial patent application on an 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 Recipient will file patent applications in additional countries or international patent offices within either 12 months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

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

d. Conditions When the Government May Obtain Title.

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

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

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

e. Minimum Rights to Recipient and Protection of the Recipient Right To File.

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded, and for the purposes of constructing, operating and replicating facilities. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by 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 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient 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 discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country, provided that, no such revocation or modification shall be effective unless (a) such funding agency provides written notice to Recipient specifically setting forth such failure and the steps that such funding agency believes are necessary to address such failure, and (b) Recipient fails to use commercially reasonable efforts to achieve practical application in such foreign country within a period of one year following its receipt of such notice.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Recipient Action To Protect Government's Interest.

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, 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 requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the 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 United States or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

g. Subaward/Contract.

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by the subawardee/contractor. Either Recipient or Subrecipients/contractors performing experimental, developmental, or research work will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions unless Recipient ensures that such rights obtained by Recipient comply with the provisions of this Agreement. Those subawardees/subcontractors normally subject to the Bayh-Dole Act, 35 U.S.C. 200, et seq., shall have the option of retaining title to their own subject inventions.

(2) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

h. Reporting on Utilization of Subject Inventions.

The Recipient 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 Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

i. United States Competitiveness and Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that any products for sale in the United States that embody subject inventions or were made using data first produced under this Agreement, will be manufactured substantially in the United States, and that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible. The Recipient further agrees that processes, services, and improvements thereof which incorporate subject inventions or data first produced under this Agreement shall be implemented in the Recipient's biorefinery facilities in the United States either prior to or simultaneously with implementation in its facilities outside the United States. Such processes, services, and improvements, when implemented outside the United States, shall not result in reduction of the use of the same processes, services, or improvements in the United States.

j. March-in-Rights.

The Recipient agrees that with respect to any subject invention in which it has acquired title, and to other intellectual property specifically used in, and necessary for replication of, the Facility to which the Recipient has title under this Agreement, licensing, or sublicensing rights, DOE has the right to require the Recipient, an assignee or exclusive licensee of intellectual property specifically used in the Facility to grant a non-exclusive, partially exclusive, or exclusive license in any field of use in which Recipient (either on its own behalf or via one or more licensees) has not used commercially reasonable efforts to achieve practical application of or replicate such intellectual property specifically used in the Facility to a responsible applicant or applicants, upon terms that are reasonable under the circumstances (including, without limitation, reasonable royalties), and if the Recipient, assignee, or exclusive licensee refuses such a request upon such terms, DOE has the right to grant such a license on such terms (including, without limitation, reasonable royalties payable to Recipient) itself if DOE determines that:

(1) Such action is necessary because the Recipient 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 Recipient, 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 Recipient, assignee, or licensee;

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause 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; or

(5) Such action is necessary because the Recipient has not taken or is not expected to take within a reasonable time, effective steps to replicate the Facility, either on its own behalf or via one or more licensees.

Provided, however, that, DOE's rights under this provision shall not apply, and Recipient shall not have any obligation to grant a license or sublicense under this provision, unless (a) DOE provides written notice to Recipient specifically setting forth the basis upon which it believes that action under this provision is necessary and the steps that DOE believes are necessary to avoid application of this provision, and (b) Recipient (either directly or through one or more licensees) fails to use commercially reasonable efforts to achieve practical application or replicate the subject invention in the field of use at issue within a period of one (1) year following its receipt of such notice.

Further, in the event that DOE offers march-in rights that are different from those set forth in this provision 4(j) or in provision 7 below to any other awardee of DOE pursuant to Section 932(d)(2)(B) of the Energy Policy Act of 2005, DOE shall offer such terms to Recipient hereunder.

k. Communications.

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

l. Electronic Filing.

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

5. RIGHTS IN DATA

a. Definitions.

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

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 administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes (i) the source code, algorithm, process, formulae, and flow charts of the software, (ii) any Restricted computer software, (iii) any Protected Data and (iv) Limited rights data.

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.

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 confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected Data, as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being Protected Data by a party to the award.

Protected rights, as used in this clause, mean the rights in Protected Data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

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 whatsoever, and to have or permit others to do so.

b. Allocation of Rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright and as provided for Protected Data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause, the Government shall have unlimited rights in—

(i) Data specifically identified in this agreement as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software, Protected Data and limited rights data) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for Protected Data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.

(2) Notwithstanding clause (b)(1) above, the Recipient shall have the right to—

(i) Protect rights in Protected Data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;

(iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

c. Copyright.

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as if and when the data are published or deposited for registration as a published work in the United States Copyright Office. For such copyrighted data, including computer software (but excluding restricted computer software), the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software and are incorporated in data delivered under this agreement to the Government, the Government shall acquire a copyright license as set forth in subparagraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

d. Release, Publication and Use of Data.

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

e. Unauthorized Marking of Data.

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(1) or (h)(2) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to

be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

f. Omitted or Incorrect Markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

g. Rights to Protected Data.

(1) The Recipient may, with the concurrence of DOE, claim and mark as Protected Data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed "Protected Data" will be

clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

> PROTECTED RIGHTS NOTICE
> These Protected Data were produced under agreement no. DE-FO36-08GO17027 with the United States Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until five years after the data are generated, unless express written authorization is obtained from the Recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.
>
> (End of notice)

(2) Subject to clause (g)(5) below, any such marked Protected Data may be disclosed by the Government or the Contracting Officer under obligations of confidentiality solely internal Governmental evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or to subcontractors or other team members performing work under this agreement, as necessary for design, construction, operation, and replication of the Facility.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data:

(a) At the end of the protected period;

(b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;

(c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality;

(d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality; or

(e) if any of the data results in or becomes a subject invention, as defined in the Patent Rights clause of this Agreement, in which case the Government will treat such data as Protected Data until the Recipient has filed its initial patent application.

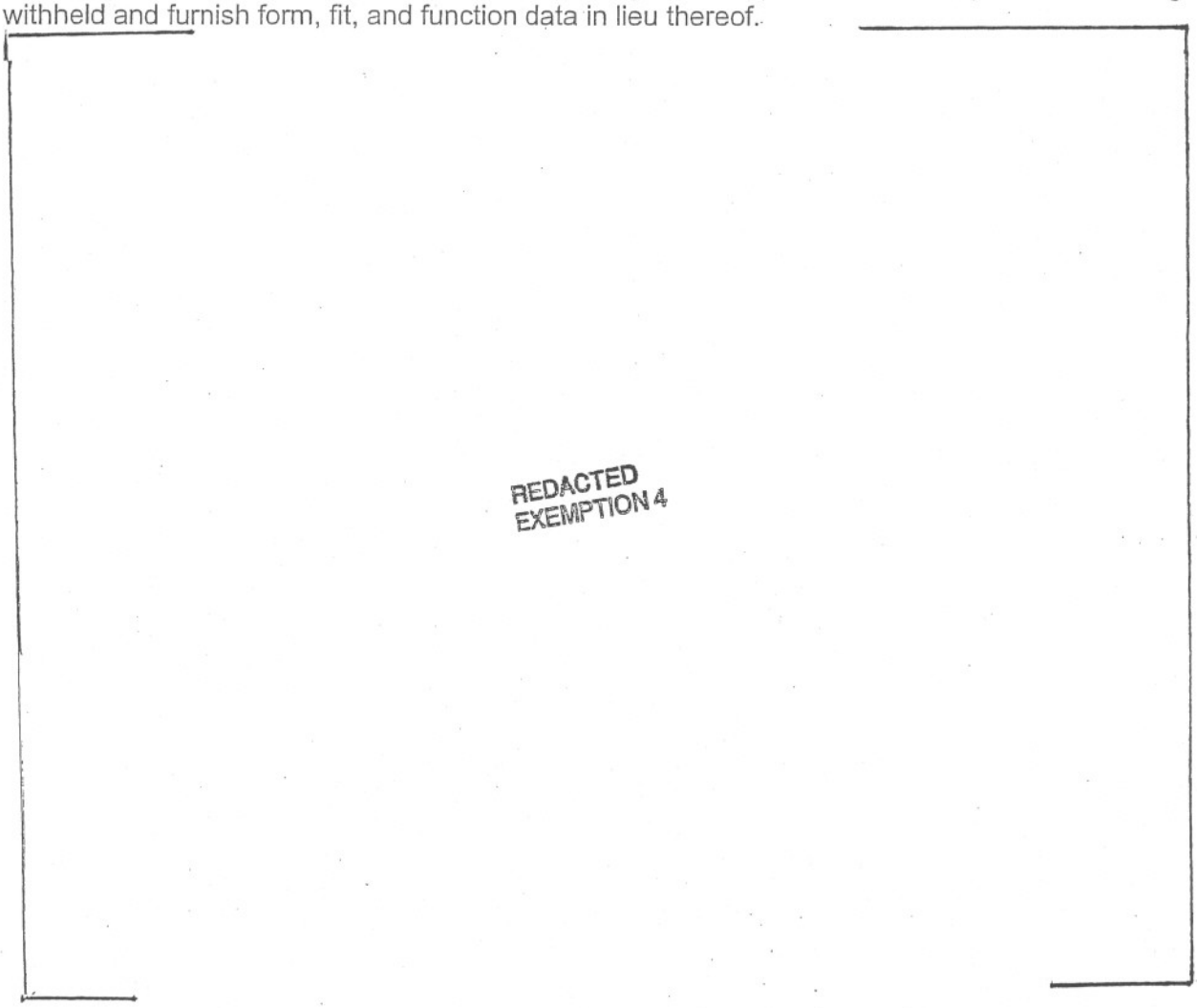
(4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any prima facie claim that the data are Protected Data: Data that demonstrate progress toward meeting DOE's technical goals to design, construct, build, and operate an integrated biorefinery employing lignocellulosic feedstocks. These data may include financial and project information sufficient to validate that the facility constructed will operate profitably according to the standards set forth in Section 932 of EPAct. Data that demonstrates progress may include, for example: (i) displaced gallons of gasoline, or fossil fuels generally, resulting from, or that could result from, ethanol sales; (ii) avoided greenhouse-gas emissions resulting from, or that could result from, ethanol sales and use in vehicles; and other quantities that indicate progress towards DOE's goals in this project. These results and data will be made

available to the public and included in the project final report, and in other reports and presentations, as appropriate. The parties agree that notwithstanding the data enumerated above, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected and non-business confidential data, nor does the preceding enumerated data constitute any admission by the Government that technical data not so enumerated is Protected Data.

(5) The Government's sole obligations with respect to any Protected Data shall be as set forth in this paragraph (g) and as required under applicable regulations and law, including 18 U.S.C. 1905. The Government is responsible for obtaining nondisclosure agreements, where necessary, from its support services contractors that obligate those contractors to not disclose Protected Data.

h. Protection of Limited Rights Data.

(1) When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.



REDACTED
EXEMPTION 4

All such data shall be treated by Government in accordance with the "Limited Rights Notice" below, provided that Recipient affixes such notice to such data.

Additionally, the Contracting Officer may by written request the delivery of other limited rights data that has been withheld or would otherwise be withholdable that the Contracting Officer deems necessary to substantiate the final report submitted by the Recipient. Where delivery of such data is provided, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. DE-FO36-08GO17027 (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture or other commercial purposes nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure and against any manufacturing or other commercial use:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) 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;

(3) 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; and

(4) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

i. Subaward/Contract.

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subaward/contract award without further authorization.

j. Additional Data Requirements.

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

k. The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

6. RIGHTS TO PROPOSAL DATA (TECHNICAL)

Except for data contained on pages 3, 5, 7, 8, 11-21, 23-29, 31-39, 40-43, 46-51, 53, 62-63, 65-66, 68-69, it is agreed that as a condition of award of this Agreement, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the application dated August 10, 2006, updated on August 27, 2007, upon which this Agreement is based.

7. AVAILABILITY OF CONTRACT AND OTHER DATA

a. The Recipient will, for the entire period of Recipient's participation in the project at the Facility (including operation of the Facility) and for three years thereafter, whether or not under a government agreement, keep and maintain all technical data, including limited rights data and data obtained from subcontractors and licensors, necessary to construct, operate, and replicate the Facility specified by the application dated August 10, 2006, updated on August 27, 2007, and all data including business and financial data necessary to evaluate the technical and economic operation of the Facility. During the entire period of construction and operation of the Facility, regardless of whether the Government participates past the design phase, the Recipient shall permit the Government and its representative the right to inspect at the Facility any data kept and maintained pursuant to this paragraph, subject to the terms and conditions of this agreement. The Recipient shall, after termination of the Government's participation in the project at the Facility, periodically deliver reports to the Government on the construction and operation of the Facility, which reports shall not include limited rights data.

b. If the Recipient withdraws from this Agreement or defaults on its obligations under this Agreement after the design or construction phases, the Government shall have the right to have

all Protected Data, limited rights data and other data specifically used in the implementation of the Facility delivered to the Government as the Contracting Officer shall direct upon such termination, provided that:

(i) Any limited rights data delivered pursuant to this paragraph shall be marked as provided in Paragraph (h)(2) of the Rights in Data clause with the addition to the legend thereof after (a)(5) as follows: "(6) Use by Government or others on its behalf to the extent necessary to enable the Government to complete construction operation, and replication of the Facility specified by the application dated August 10, 2006, updated on August 27, 2007, subject to Section 6(c) below."

(ii) Any Protected Data delivered pursuant to this paragraph shall be marked as provided in Paragraph (g)(1) of the Rights in Data clause with the addition after (g)(2)(b) of the following: "(c) Use by the Government or others on its behalf, to the extent necessary to enable the Government to complete construction, operations, and replication of the Facility specified by the application dated August 10, 2006, updated on August 27, 2007."

REDACTED
EXEMPTION 4

8. REPLICATION OF THE BIOREFINERY FACILITY

Pursuant to Section 932(d)(2)(B) of the Energy Policy Act of 2005 and applicable provisions of this Agreement, Recipient agrees to replicate the Facility and other associated technologies implemented in the Facility. Recipient may fulfill this requirement solely or in part by licensing to others, for reasonable royalties, all technology necessary for replication for which Recipient has the rights to license or sublicense.

Attachment C – Reporting Requirements

A. REGULAR REPORTS

Types of Regular Reports.

Project Report – This report will reflect the status of work completed to date by comparing the status of Project scope, schedule, and budget planned versus actual work completed via the Work Breakdown Structure. This report will include a narrative discussing all significant accomplishments in the reporting period, significant variances, and an updated Risk Register. The DOE Project Officer will provide Recipient the template for this report.

Financial Report – This report will reflect the total amount of Project funds, both Recipient and DOE, expended to date on the project. This report will be submitted using the Government's Standard Form (SF) 269.

Project Report (short) – The short version of the Project Report will consist of a short narrative limited to discussion of significant accomplishments and variances. The DOE Project Officer will provide Recipient the template for this report and retains the right to tailor the report as necessary.

Reporting Frequency.

On or before ninety (90) calendar days after the effective date of the Agreement and monthly thereafter until the Project has successfully completed Phase 2 as described in Attachment A, Recipient will submit a Project Report and Financial Report to DOE. Following Phase 2 through the completion of the Project, the Recipient shall submit a short version of the Project Report quarterly.

Submitting Reports.

All reports are to be submitted electronically to DOE Contracting Officer and Project Officer via the EERE Project Management Center database at https://www.eere-pmc.energy.gov/SubmitReports.aspx.

B. ANNUAL PROJECT PLAN DOCUMENT

Recipient shall submit electronically to the DOE Contracting Officer and Project Officer (See Article 6 for email addresses) the draft Annual Project Plan as described in Article 8(d)(ii). The draft plan shall be submitted 60 days following execution of this Agreement and 60 days before the end of each Government Fiscal Year thereafter. The template for the Annual Project Plan will be provided by the DOE Project Officer.

C. SPECIAL STATUS REPORTS

Recipient shall report the following events to the DOE Contracting Officer and Project Officer (See Article 6 for email addresses) as soon as practicable after they occur:

- Developments that have a significant favorable impact on the project, such as significant target accomplishments, significant tests, experiments, or symposia.

- Problems, delays, or conditions which impair Recipient's ability to meet the objectives of this Agreement or which may require DOE to respond to questions relating to such events from the public. For example, Recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:

  - Any single fatality or injuries requiring hospitalization of five or more individuals.

  - Any significant environmental permit violation.

  - Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes or regulations.

  - Any incident that causes a significant process or hazard control system failure.

  - Any event which is anticipated to cause a significant schedule slippage or cost increase.

  - Any other incident that has the potential for high visibility in the media.

D. PAYMENT DOCUMENTATION

Recipient shall submit a request monthly for payment along with documentation reporting which activities have been achieved and are being invoiced against or attributed to cost share. This request for payment and supporting documentation shall be submitted as required by Article 14(c) and shall be sufficient for the Third Party Engineer to reasonably verify the accomplishment of the activity as identified in Attachment E.

E. FINAL REPORT

1. Recipient shall submit a Final Report making full disclosure of all major developments by Recipient within 90 days of either completion or termination of this Agreement.

2. Content. The Final Report must:

   a. Identify the DOE award number, project title, name of Recipient and project director(s)/principal investigator(s);

   b. Display prominently on the cover of the report any authorized distribution limitation notices, such as patentable material or Protected Data;

   c. Provide a one to two page executive-level summary, of the major accomplishments of the Agreement and the benefits of using a TIA. This summary shall include a discussion of the actual or planned benefits of the technologies for the commercial sectors;

d. Provide a comparison of the actual accomplishments with the goals and objectives of the Project;

e. Provide the final capital and operating costs of the Project one year following Phase 5 Substantial Completion;

f. Provide the status of replication efforts currently underway and planned for the future. This should contain all planned licensing activities;

g. Summarize project activities for the entire period of funding, including original hypotheses, approaches used, problems encountered and departure from planned methodology, and an assessment of their impact on the project results. Include, if applicable, facts, figures, analyses, and assumptions used during the life of the project to support the conclusions; and

h. Identify products developed under this Agreement and technology transfer activities, such as:

- Publications (list journal name, volume, issue), conference papers, or other public releases of results. If not provided previously, attach or send copies of any public releases to the DOE Project Officer identified in Block 11 of the Notice of Financial Assistance Award;
- Web site or other Internet sites that reflect the results of this project;
- Networks or collaborations fostered;
- Technologies/Techniques;
- Inventions/Patent Applications, licensing agreements; and
- Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

3. Electronic Submission. The Final Report must be submitted electronically via the DOE Energy Link System (E-Link) at http://www.osti.gov/elink-2413.

4. Electronic Format. Reports must be submitted in the ADOBE PORTABLE DOCUMENT FORMAT (PDF) and be one integrated PDF file that contains all text, tables, diagrams, photographs, schematic, graphs, and charts. Materials, such as prints, videos, and books, that are essential to the report but cannot be submitted electronically, should be sent to the DOE Project Officer.

5. Submittal Form. The Final Report must be accompanied by a completed electronic version of DOE Form 241.3, "U.S. Department of Energy (DOE), Announcement of Scientific and Technical Information (STI)." You can complete, upload, and submit the DOE F.241.3 online via E-Link. You are encouraged not to submit patentable material or Protected Data in these reports, but if there is such material or data in the report, you must: (1) clearly identify patentable or Protected Data on each page of the report; (2) identify such material on the cover

of the report; and (3) mark the appropriate block in Section K of the DOE F 241.3. Reports must not contain any limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release. Protected Data is specific technical data, first produced in the performance of the award that is protected from public release for a period of time by the terms of the award agreement.

F. CLOSE-OUT REPORTS

Recipient shall submit a Patent Certification Report (located at http://grants.pr.doe.gov) to the Contracting Officer. This report is due within 60 days of the end of the Project Period or termination of this Agreement, whichever is earlier.

Attachment D – DOE Funding Schedule

	DOE Funding
FY07	$ 50,188,277
FY08	13,000,000*
FY09	12,811,723*
FY10	0
FY11	0
TOTALS	$ 76,000,000

*DOE funding is subject to the availability of appropriated funding for each fiscal year.

Attachment E – Schedule of Payments

	Total Budgeted Cost	Government Share at 40% up to $50.2M ceiling in Phase 1	Recipient Share
Phase 1 Budgeted Cost*			
Contingency [Ex. 4]			
Subtotal			
Phase 2 Budgeted Cost			
Contingency [Ex. 4]			
Subtotal		REDACTED EXEMPTION 4	
Funded Project Budgeted Cost			
Funded Project Contingency			
Total for Funded Project			
Project Final Report**			
Total	$ 355,954,968	[redacted]	$ 279,954,968

*Total Phase 1 Government Share will be capped at $50,188,277 and disbursements at the 40% split will cease after reaching this ceiling in accordance with **Attachment A**.

[Ex. 4] will be released upon End of Project as defined in **Attachment A** and receipt and acceptance of the Final Report in accordance with **Attachment C,** bringing the total Government Share to $76M.

Performance Measure Definition Statements (PMDS) have been prepared by Recipient for each WBS Activity listed in this Attachment and submitted to DOE for approval. The PMDS documents will define detailed scope, gateways, and performance requirements based on Recipient's resource loaded Work Breakdown Structure. Per Article 8(c) of this Agreement, the DOE Project Officer retains approval authority with regard to revisions to the documents. Requests for disbursements will be made against the pre-approved PMDS documents for respective WBS activities. The Third Party Independent Engineer is responsible for validating the acceptable completion of invoiced PMDS activities, or portions thereof, and providing written documentation to the DOE Project Officer.

WBS ACTIVITY	WBS SHORT TITLE	BUDGETED TOTAL COST	MAX GOV SHARE***
	REDACTED EXEMPTION 4		
	REDACTED EXEMPTION 4		

WBS ACTIVITY	WBS SHORT TITLE	BUDGETED TOTAL COST	MAX GOV SHARE***

REDACTED
EXEMPTION 4

REDACTED
EXEMPTION 4

WBS ACTIVITY	WBS SHORT TITLE	BUDGETED TOTAL COST	MAX GOV SHARE***

REDACTED
EXEMPTION 4

REDACTED
EXEMPTION 4

TOTAL + CONTINGENCY $ 355,954,968

REDACTED
EXEMPTION 4