

University of Tennessee

VENDOR:

**University of Tennessee
Research Foundation (UTRF)**



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North - 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators

Douglas Henry Reginald Tate
Doug Jackson Ken Yager
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Charles Curtiss, Vice-Chairman
Representatives

Harry Brooks Donna Rowland
Curtis Johnson Tony Shipley
Steve McManus Curry Todd
Mary Pruitt Eddie Yokley
Craig Fitzhugh, *ex officio*
Speaker Kent Williams, *ex officio*

M E M O R A N D U M

TO: Dr. Jan Simek, Interim President
University of Tennessee

FROM: Bill Ketron, Chairman, Fiscal Review Committee **BK**
Charles Curtiss, Vice-Chairman, Fiscal Review Committee **CC**

DATE: November 5, 2009

SUBJECT: **Contract Comments**
(Fiscal Review Committee Meeting 11/4/09)

Department: University of Tennessee

Contractor: University of Tennessee Research Foundation (UTRF)

Summary: The vendor is currently responsible for the provision of administrative and support services associated with the construction and operation of a pilot scale cellulosic ethanol bio-refinery. The proposed amendment makes various revisions to the scope; increases the maximum liability by \$11,000,000.; and extends the current contract for an additional year through June 30, 2013.

Maximum liability: \$7,500,000

Maximum liability w/amendment: \$18,500,000

After review, the Fiscal Review Committee members voted to postpone action on the contract amendment until the next scheduled meeting.

cc: Ms. Mary McDonald, Director of Contracts, University of Tennessee



THE UNIVERSITY of TENNESSEE

KNOXVILLE, CHATTANOOGA, MARTIN TULLAHOMA, MEMPHIS

OFFICE OF THE VICE PRESIDENT & TREASURER

RECEIVED

OCT 23 2009

FISCAL REVIEW

6:09 p.m.

October 23, 2009

Mr. Jim White
Executive Director
Fiscal Review Committee
320 Sixth Avenue, North – 8th Floor
Nashville, TN 37243-0057

Dear Mr. White:

The University of Tennessee (UT) is submitting for the committee's review an amendment (Amendment #1) to the contract with the University of Tennessee Research Foundation (UTRF) for the purpose of providing administrative and programmatic support services to implement the University's Biofuels Initiative including the construction and operation of a pilot scale cellulosic biorefinery and switchgrass utilization demonstration and farm production of switchgrass

In FY 2008, the University was appropriated \$40,700,000 to fund the construction of a pilot scale cellulosic ethanol biorefinery, process development unit, and switchgrass utilization demonstration. In addition, UT was appropriated operating funds to support related operating and research costs and to establish switchgrass as the primary source of feedstock for the biorefinery.

The University received approval from the State Building Commission to make a grant of the construction funds to UTRF to assist in the construction of the biorefinery. UTRF, through its wholly owned subsidiary, Genera Energy LLC (Genera) is collaborating with DuPont Danisco Cellulosic Ethanol, LLC to fund and construct and operate the facility. The University received approval from the Fiscal Review Committee in October 2008 to contract \$7,500,000 of the total operating funds to UTRF to implement some of the biorefinery operations.

As the integrated programs and activities of the Biofuels Initiative have developed and progressed, UT and UTRF agree that UTRF is the appropriate vehicle, through Genera, to implement some other elements of the integrated Biofuels Initiative. In particular, the contract amendment expands the scope of the contract to allow UTRF to provide the administrative and support services for the switchgrass farmer contract program, previously provided through the UT Institute of Agriculture, and to execute the operations of the biorefinery and the switchgrass supply chain and utilization demonstration, following the natural transition of responsibilities for this initiative to achieve a self-sustaining competitive industry at the end of state funding support

In line with the expansion of the scope and the ramp up of operations in the facilities and transition to a self-sustaining program, the contract term is extended through June 30, 2013 and the budget is revised accordingly. The amended scope and budget and terms reflect further refinement of plans for implementing the project's objectives, including further clarification of the use of UT employees assigned to UTRF to staff the project through Genera, which are accomplished within the state's stated investment in the Biofuels Initiative.

If you have questions or need additional information, please let me know.

Respectfully,

Mary Carr McDonald

Mary Carr McDonald
Director of Contracts

Attachment

C: Jan Simek
David Millhorn
Butch Peccolo
Chris Cimino
Gary Rogers
Kelly Tiller
Randy Gentry
Anthony Haynes

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Mary McDonald	*Contact Phone:	865-974-6326		
*Contract Number:		*RFS Number:			
*Original Contract Begin Date:	November 1, 2008	*Current End Date:	June 30, 2012		
Current Request Amendment Number: <i>(if applicable)</i>	#1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	December 23, 2009				
*Department Submitting:	The University of Tennessee				
*Division:	University-wide Administration				
*Date Submitted:	October 23, 2009				
*Submitted Within Sixty (60) days: <i>If not, explain:</i>	Yes				
*Contract Vendor Name:	UT Research Foundation				
*Current Maximum Liability:	\$7,500,000				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2009	FY: 2010	FY: 2011	FY: 2012	FY	FY
\$626,000	\$1,504,000	\$2,596,000	\$2,774,000	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2009	FY: 2010	FY:	FY:	FY	FY
\$293,334.27	\$274,309.67	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		FY2009 surplus of \$171,296.77 is carried over into FY2010. Remaining \$161,368.96 is timing difference between expenses incurred by UTRF in FY2009 and expense reimbursement by UT in FY2010.			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		The Biofuels Initiative integrates multiple elements and programs to achieve the project's broad objectives. The timing of the implementation of some of these objectives is conditional on other integrated elements, resulting in some adjustment of expenditures across the fiscal year, as contemplated in the description of the Scope of Services in the original contract.			
IF Contract Expenditures exceeded Contract Allocation, please give the		N/A			

Supplemental Documentation Required for
Fiscal Review Committee

reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:	State:	\$ 7,500,000	Federal:
Interdepartmental:			Other:
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>		See attached UTRF Biofuels Original Contract Sheet – Actual & Anticipated Expenditure Summary	
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>		N/A – a separate line item in the state appropriations bill funds the Tennessee Biofuels Initiative and these funds are invested in their entirety to support this project.	
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>		N/A – UTRF currently provides administrative and support services for the UT biofuels project through its wholly owned subsidiary, Genera Energy LLC, which includes the construction and operation of a pilot scale cellulosic biorefinery and switchgrass utilization demonstration. A crucial component of this project is the production, harvesting, handling, transportation, pre-processing and storage of the biomass. Adding the responsibilities previously provided through the UT Institute of Agriculture, as provided in this amendment follows the natural progression of responsibilities for this initiative to achieve a self-sustaining initiative at the end of state funding support in FY 2012.	

UT -UTRF Operating Contract 105742
Expenditures by Month
For the Fiscal Year Ended June 30, 2009

	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Fiscal 09 Totals
Administrative Support										
Salaries, Wages, Benefits	\$ 2,346.26	\$ 19,296.47	\$ 9,741.57	\$ 7,807.72	\$ 6,117.88	\$ 2,719.97	\$ 2,626.04	\$ 2,165.57	\$ 12,812.64	\$ 65,205.96
General & Administrative	1,424.91	9,668.22	4,105.10	7,140.20	2,245.31	12,367.25	1,462.76	993.83	1,388.31	65,634.12
Office Expenses	3,771.17	28,964.69	13,846.67	14,947.92	8,363.19	17,856.45	21,520.58	29,946.67	32,418.63	40,795.89
Legal & Other Professional										
Legal	950.00	7,835.50	8,669.52	3,377.25	6,573.00	1,649.64	2,409.98	3,621.93	18,801.28	53,888.10
Accounting & Other Prof	950.00	11,600.00	4,850.00	3,377.25	5,655.60	-	2,500.00	6,200.00	3,900.00	34,705.60
SUD Operating Costs										
Feedstock storage		19,435.50	13,519.52	3,377.25	12,228.60	1,649.64	4,909.98	9,821.93	22,701.28	88,593.70
Feedstock transportation					1,500.00	55,700.00	2,013.97	15,435.08	8,805.46	83,454.51
General & Administrative							20,931.48			20,931.48
Contractual services & consulting							1,268.30		1,198.82	2,467.12
SUD salaries, wages, benefits							41,062.50		46,557.95	87,620.45
SUD facility operating										-
PDU and Pilot Plant Operating										
Contractual services										
Salaries, wages, benefits (switchgrass only)										
Facility operating (switchgrass only)										
2010-2012 Switchgrass Farmer Program										
Contingency Funding										
TOTALS	\$ 4,721.17	\$ 48,400.19	\$ 27,366.19	\$ 18,325.17	\$ 22,091.79	\$ 75,206.09	\$ 91,706.81	\$ 55,203.68	\$ 111,682.14	\$ 454,703.23

Reconciliation of Supplemental Documentation, Contract Summary Sheet and Vendor Payment Report

626,000.00 BY 2009 Contract Allocation Per Contract Summary Sheet Executed in October 2008

454,703.23 Total Actual FY 2009 Expenditures incurred in FY 2009 from Actual/Anticipated Expenditure Summary

171,296.77 Difference Carried Forward into FY 2010 Contract Allocation

Payments made to UTRF Per Vendor Payment Report:

<u>Document Date</u>	<u>Payment Amount</u>	
22-Apr	155,455.69	Document #2402321353
12-May	86,796.83	Document #2402331575
5-Jun	51,081.75	Document #2402337247

293,334.27 Total FY 2009 Expenditures paid in FY 2009 - Reported in Supplemental Documentation

20-Jul 161,368.96 FY 2009 Expenditure paid in FY 2010 (Document # 2402529671)

454,703.23 Total Actual FY 2009 Expenditures incurred in FY 2009 - Actual/ Anticipated Expenditure Summary

17-Sep 112,940.71 FY 2010 Expenditures paid in FY 2010 (Document # 24025529674)

567,643.94 Total Expenditures paid to date as per Vendor Payments Report

20-Jul 161,368.96 FY 2009 Expenditure paid in FY 2010 (Document # 2402529671)

17-Sep 112,940.71 FY 2010 Expenditures paid in FY 2010 (Document # 24025529674)

274,309.67 Total Expenditures paid in FY 2010 - Reported in Supplemental Documentation

**THE UNIVERSITY OF TENNESSEE
REQUEST: NON-COMPETITIVE AMENDMENT
CONTRACT**

1) NCJ Number:	9000002330	Fund Number:	E170117
2) Campus/Institute Name:	University-Wide Administration Executive Vice President		

EXISTING CONTRACT INFORMATION

3) Short Description:	Provide administration and support services for Tennessee Biofuels Initiative		
4) Proposed Vendor:	Name:	UNIVERSITY OF TENNESSEE RESEARCH FDN	
	Vendor Number:		
	Vendor ID:		
5) Original CTS Number:	0000000000		
6) Contract Start Date:	11/01/2008		
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	06/30/2012		
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$ 7,500,000.00		

PROPOSED AMENDMENT INFORMATION

9) <u>Proposed</u> Amendment #	001
10) <u>Proposed</u> Amendment Effective Date:	12/23/2009
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	06/30/2013
12) <u>Proposed</u> Amendment Amount	\$ 11,000,000.00
13) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$ 18,500,000.00
14) Approval Criteria:	Non-competitive negotiation is in universitys best interest
15) Description of the Proposed Amendment Effects & Any Additional Service:	
<p>In 2007, the state tasked with the University of Tennessee with the implementation of the state's biofuels initiative. State funding was provided for the construction and management of a pilot scale cellulosic ethanol biofinery, a switchgrass utilization demonstration (SUD) project, and for the development of a biomass production, marketing, and use program. The University has contracted with the UT Research Foundation for the oversight of the construction and operation of the biorefinery and SUD project. This amendment adds oversight responsibility for the associated biomass program activities, provides funding for increased staff responsibilities associated with the biofuels initiative, and enhances efforts to expand the impact of the state's biofuels initiative by positioning the university to take advantage of new opportunities, technologies, revenue enhancement, and partnership opportunities.</p>	
16) Explanation of Need for the Proposed Amendment:	
<p>When the Tennessee Biofuels Initiative was originally funded, it was envisioned the initiative would be self-supporting beginning in FY 2013. The shifting of responsibilities for the biomass program from the UT Institute of Agriculture to the UT Research Foundation recognizes the critically of monitoring switchgrass production and storage to the success of the biorefinery operation and is a natural progression to establishing a self-supporting program.</p>	

17) Name & Address of Vendor/Contractor's Current Principal Owner(s): (not required if proposed contractor is a state education institution)

UNIVERSITY OF TENNESSEE RESEARCH FDN

600 HENLEY ST, STE 211

KNOXVILLE

TN

37996-4122

US USA

18) Documentation of Office for Information Resources Endorsement: N/A
(required only if the subject service involves information technology)

19) Documentation of Department of Personnel Endorsement: N/A
(required only if the subject service involves training for state employees)

20) Documentation of State Architect Endorsement: N/A
(required only if the subject service involves construction or real property related services)

21) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives:

The UT Research Foundation serves the university by promoting university research, encouraging market utilization of research results, developing and supporting an entrepreneurial research culture, and contributing to the state and region's economic development. The Tennessee Biofuels Initiative encompasses all these needs making the UT Research Foundation the chosen strategy to assist the university in the successful creation of a multi-faceted, cellulosic biofuels industry for the State of Tennessee.

22) Justification for the Proposed Non-Competitive Amendment:

The UT Research Foundation currently provides administrative and support services for the UT biofuels project, which includes the construction and operation of a pilot scale cellulosic biorefinery. A crucial component of this project is the production and storage of the biomass. Adding biomass responsibilities previously provided through the UT Institute of Agriculture, as provided in this amendment follows the natural progression of responsibilities for this initiative to achieve a self-sustaining initiative at the end of state funding support in FY 2012.

RECEIVED

OCT 28 2009

**1ST AMENDMENT TO CONTRACT
between
THE UNIVERSITY OF TENNESSEE
and
UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION**

FISCAL REVIEW

This 1st Amendment to contract is made and entered into by The University of Tennessee, hereinafter referred to as "UT" or "University", and University of Tennessee Research Foundation, hereinafter referred to as "UTRF" or "Contractor".

WHEREAS, UTRF is participating through its wholly-owned subsidiary, Genera Energy LLC ("Genera") in UT's implementation of a comprehensive Biofuels Initiative (the "UT Biofuels Initiative") on behalf of the State of Tennessee and the objectives of such initiative ("Objectives") include: (1) demonstration and establishment of a dedicated biomass energy crop supply chain with farmers to supply a cellulosic biorefinery; (2) demonstration of pre-commercial production of ethanol from switchgrass and other biomass feedstocks; (3) establishment of premier long-term research and development capability in bioenergy and bioproducts; and (4) development of a viable, sustainable, long-term path to commercialization of cellulosic biofuels and energy crops in Tennessee;

WHEREAS, the parties wish to amend the original contract ("Contract") effective for the period commencing November 1, 2008 and ending on June 30, 2012, to expand the scope of services and to provide additional funding.

Item 1. Section A of the Contract is hereby amended to read as follows:

A. SCOPE OF SERVICES

In support of this research and economic development initiative, UTRF shall perform the following Scope of Services for the University, which is acting as steward for the State of Tennessee's interest in developing a cellulosic biofuels and bioproducts industry in Tennessee:

1. Administrative, management and professional support services, including loaned employees, associated with the oversight of the construction and operation of a R&D pilot scale cellulosic ethanol biorefinery and switchgrass utilization demonstration project, as well as the development of biomass production, marketing and use. Services include, but are not limited to, project oversight, facilities operations, and marketing services as mutually agreed upon, and creation and operation, directly or with cooperatives, contractors, joint venture partners and others, of alternate biomass sources and uses, for example, to help balance supply and demand for biomass, to provide markets while larger biorefinery or other

plants are being built, and to help assure an adequate supply of biomass to meet demand as larger biomass uses come on-line.

2. Contracting with Tennessee farmers to assist and incent them to grow and/or store switchgrass and other biomass, arranging for and demonstrating the full scope of farm-side biomass production, including for example procuring or providing seed, addressing equipment and transportation needs, storage, pre-processing and any other service identified in the future deemed necessary or reasonably expected to assist in the achievement of the Objectives.
3. Management of technology development and commercialization activities.

Services provided by UTRF under this Contract shall be planned, structured, and delivered to integrate, to the maximum extent practical, with the overall mission, goals, and program of the UT Biofuels Initiative being carried out simultaneously by UT.

The parties anticipate that UTRF will provide portions of this Scope of Services through its wholly owned subsidiary, Genera Energy LLC ("Genera"), and through Genera with its third-party collaborators. In accordance with Section D.3 below, any subcontract with Genera or any other entity for any of the services to be performed under this Contract shall not be entered into without obtaining the prior written approval of University. If such subcontracting is approved by the University, subcontracts shall contain, at a minimum, sections of this Contract below pertaining to conflicts of interest (D.11), nondiscrimination (D.7), records (D.6), and use of illegal immigrants (D.15).

UTRF shall not be relieved of any obligation arising under this Contract solely because a portion of the Scope of Services is performed by, or delegated to, Genera or any other entity. UTRF shall be responsible to the University for any act or omission of Genera, any other subcontractor, or any third-party collaborator of such subcontractors.

The parties intend for this Scope of Services to be interpreted liberally to permit UT and UTRF to use available UT Biofuels Initiative operating funds in the most cost-effective manner to achieve to the maximum extent possible within available funding the Objectives, including taking advantage of new opportunities, technologies, partnerships, sources of funds, or other resources as may become available to further those Objectives.

In fulfilling its responsibilities, UTRF shall cause Genera to provide to the UT Executive Vice President and Chief Operating Officer and the UT Biofuels Initiatives Director of External Operations:

- a. Project schedule detailing significant events for completion by UTRF along with responsibilities expected of others involved in this project. Exhibit A-2 provides these benchmarks.
- b. Monthly written progress reports to supplement weekly informal communications describing Genera's significant achievements.
- c. Unaudited monthly accounting reports.

The information above shall also be provided to the Executive Director of the Fiscal Review Committee of the General Assembly, unless otherwise notified in writing by the Executive Director.

Item 2. Section B. of the Contract is hereby amended to read as follows:

B. CONTRACT TERM

This contract shall be effective for the period commencing on November 1, 2008 and ending on June 30, 2013. The contract term may be extended by written agreement executed by all parties hereto and approved by the appropriate University officials in accordance with applicable State laws and regulations.

Item 3. Section C.1. of the Contract is hereby amended to read as follows:

C.1. Maximum Liability. In no event shall the maximum liability to the University under this Contract exceed \$18,500,000. The maximum liability represents available funds for payment to UTRF and does not guarantee payment of any such funds to UTRF under this Contract unless such funds are appropriated by the General Assembly and actually received by the University, and the University requests work and UTRF performs said work.

Item 4. Exhibit A of the Contract is hereby replaced with Exhibit A-1 attached to this Amendment.

Item 5. The introductory clause of Section C.4. of the Contract is hereby amended to read as follows: "UTRF shall address any questions regarding the scope of services, invoice processing, and/or compensation, to:"

Item 6. Section D.4. of the Contract is hereby amended to read as follows: "Reimbursement for travel, meals or lodging must be made in accordance with University travel policies."

Item 7. The following sentence is added to the end of the last paragraph of Section D.5.: "The parties also recognize that wages and supplements of UT employees assigned to UTRF to staff the project and/or to work for Genera may be charged against funds made available under this Contract, and that the Genera Board,

consisting of a majority of outside directors, may authorize payment of Contract funds as reasonable additional compensation to General officers who are UT employees.”

Item 8. The introductory clause of Section D.13, which states, “Unless otherwise agreed upon”, is hereby amended to read as follows: “Except as otherwise agreed upon in writing by authorized officials of the Contractor and the University”.

Item 9. Except as specifically amended by this Amendment, the terms of the Contract are hereby ratified and confirmed.

In witness of their acceptance of the terms of this Amendment, the parties have had this Amendment executed by their duly authorized representatives:

FOR UT Research Foundation

FOR University of Tennessee

Signature – Authorized Official

Signature – Authorized Official

Name (Printed)

Name (Printed)

Title

Title

Date

Date

Address

Department Name

Responsible Account (if applicable)

Telephone Number

Telephone Number

SSN or Federal Identification Number

Attachment Exhibit A-1
Exhibit A-2

11708-004 #48 rev 2

EXHIBIT A-1

**UTRF BIOFUELS CONTRACT SHEET
AMENDED EXPENDITURE SUMMARY**

	FY 2009	FY 2010	FY 2011	FY2012	FY2013	TOTAL
Administrative Support	\$ 176,485.97	\$ 840,292.88	\$ 731,912.90	\$ 641,996.19	\$ 591,995.19	\$ 2,982,683.13
Legal and Other Professional Fees	83,743.70	183,500.00	134,000.00	114,000.00	114,000.00	629,243.70
SUD Operating Costs	194,473.56	717,939.00	1,904,468.44	1,359,468.44	959,468.44	5,135,817.88
PDU and Pilot Plant Operating		500,000.00	1,000,000.00	975,000.00	-	2,475,000.00
2010-12 Switchgrass Farmer Program		319,973.86	2,127,098.29	2,286,841.57	2,378,341.57	7,112,255.29
Contingency Funding		75,000.00	55,000.00	30,000.00	5,000.00	165,000.00
TOTALS	\$ 454,703.23	\$ 2,636,705.74	\$ 5,952,479.63	\$ 5,407,306.20	\$ 4,048,805.20	\$ 18,500,000.00

CONTRACT SUMMARY SHEET

021406

RES #		Contract #	
State Agency		State Agency Division	
University of Tennessee		University-wide Administration	
Contractor Name		Contractor ID # (FEIN or SSN)	
UT Research Foundation		<input type="checkbox"/> C- or <input type="checkbox"/> V- 62-6047697	
Service Description			
Provide administration and support services the Tennessee Biofuels Initiative			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CRDA #
11/1/2008	6/30/13	N/A	N/A
Mark Each TRUE Statement			
<input checked="" type="checkbox"/> N/A Contractor is on STARS		<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts	
Allotment Code	Cost Center	Object Code	Fund
332.1			
FY	State	Federal	In/Interdepartmental
FY 2009	\$ 454,703.23		
FY 2010	\$ 2,636,705.74		
FY 2011	\$ 5,952,479.63		
FY 2012	\$ 5,407,306.20		
FY 2013	\$ 4,048,805.20		
TOTAL	\$ 18,500,000.00	\$ -	\$ -
Funding Grant Code		Funding Subgrant Code	
TOTAL Contract Amount			
\$ 454,703.23			
\$ 2,636,705.74			
\$ 5,952,479.63			
\$ 5,407,306.20			
\$ 4,048,805.20			
\$ -			
\$ 18,500,000.00			
COMPLETE FOR AMENDMENTS ONLY			
FY		State Agency Fiscal Contact & Telephone #	
Base Contract & Prior Amendments		Mary Carr McDonald Director of Contracts 865-974-8326	
THIS Amendment ONLY		State Agency Budget Officer Approval	
FY 2009 \$ 454,703.23		Charles M. Peccolo, Treasurer	
FY 2010 \$ 1,675,296.77			
FY 2011 \$ 2,596,000.00			
FY 2012 \$ 2,774,000.00			
FY 2013 \$ 4,048,805.20			
TOTAL \$ 7,500,000.00		Funding Certification (certification required by F.C.A. § 9-4-611(b) that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
End Date 6/30/2012		6/30/2013	
Contractor Ownership (complete only for base contracts with contract # prefix PA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business <input type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—
Contractor Selection Method (complete for ALL base contracts—N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg, ID, GG, GU)	<input type="checkbox"/> Other	
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			

The State Building Commission authorized the University to make a grant to UT Research Foundation to assist in the construction of a pilot scale cellulosic biorefinery. The duties described in the original contract and the amendment support the operation of this biorefinery and is the reason for selecting the UT Research Foundation as the university's partner in the biomass programmatic activities

1ST AMENDMENT TO CONTRACT
between
THE UNIVERSITY OF TENNESSEE
and
UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION

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WHEREAS, UTRF is participating through its wholly-owned subsidiary, Genera Energy LLC ("Genera") in UT's implementation of a comprehensive Biofuels Initiative (the "UT Biofuels Initiative") on behalf of the State of Tennessee and the objectives of such initiative ("Objectives") include: (1) demonstration and establishment of a dedicated biomass energy crop supply chain with farmers to supply a cellulosic biorefinery; (2) demonstration of pre-commercial production of ethanol from switchgrass and other biomass feedstocks; (3) establishment of premier long-term research and development capability in bioenergy and bioproducts; and (4) development of a viable, sustainable, long-term path to commercialization of cellulosic biofuels and energy crops in Tennessee;

WHEREAS, the parties wish to amend the original contract ("Contract") effective for the period commencing November 1, 2008 and ending on June 30, 2012, to expand the scope of services and to provide additional funding.

Item 1. Section A of the Contract is hereby amended to read as follows:

A. SCOPE OF SERVICES

In support of this research and economic development initiative, UTRF shall perform the following Scope of Services for the University, which is acting as steward for the State of Tennessee's interest in developing a cellulosic biofuels and bioproducts industry in Tennessee:

1. Administrative, management and professional support services, including loaned employees, associated with the oversight of the construction and operation of a R&D pilot scale cellulosic ethanol biorefinery and switchgrass utilization demonstration project, as well as the development of biomass production, marketing and use. Services include, but are not limited to, project oversight, facilities operations, and marketing services as mutually agreed upon, and creation and operation, directly or with cooperatives, contractors, joint venture partners and others, of alternate biomass sources and uses, for example, to help balance supply and demand for biomass, to provide markets while larger biorefinery or other

plants are being built, and to help assure an adequate supply of biomass to meet demand as larger biomass uses come on-line.

2. Contracting with Tennessee farmers to assist and incent them to grow and/or store switchgrass and other biomass, arranging for and demonstrating the full scope of farm-side biomass production, including for example procuring or providing seed, addressing equipment and transportation needs, storage, pre-processing and any other service identified in the future deemed necessary or reasonably expected to assist in the achievement of the Objectives.
3. Management of technology development and commercialization activities.

Services provided by UTRF under this Contract shall be planned, structured, and delivered to integrate, to the maximum extent practical, with the overall mission, goals, and program of the UT Biofuels Initiative being carried out simultaneously by UT.

The parties anticipate that UTRF will provide portions of this Scope of Services through its wholly owned subsidiary, Genera Energy LLC ("Genera"), and through Genera with its third-party collaborators. In accordance with Section D.3 below, any subcontract with Genera or any other entity for any of the services to be performed under this Contract shall not be entered into without obtaining the prior written approval of University. If such subcontracting is approved by the University, subcontracts shall contain, at a minimum, sections of this Contract below pertaining to conflicts of interest (D.11), nondiscrimination (D.7), records (D.6), and use of illegal immigrants (D.15).

UTRF shall not be relieved of any obligation arising under this Contract solely because a portion of the Scope of Services is performed by, or delegated to, Genera or any other entity. UTRF shall be responsible to the University for any act or omission of Genera, any other subcontractor, or any third-party collaborator of such subcontractors.

The parties intend for this Scope of Services to be interpreted liberally to permit UT and UTRF to use available UT Biofuels Initiative operating funds in the most cost-effective manner to achieve to the maximum extent possible within available funding the Objectives, including taking advantage of new opportunities, technologies, partnerships, sources of funds, or other resources as may become available to further those Objectives.

In fulfilling its responsibilities, UTRF shall cause Genera to provide to the UT Executive Vice President and Chief Operating Officer and the UT Biofuels Initiatives Director of External Operations:

- a. Project schedule detailing significant events for completion by UTRF along with responsibilities expected of others involved in this project.
- b. Monthly written progress reports to supplement weekly informal communications describing Genera's significant achievements.
- c. Unaudited monthly accounting reports.

The information above shall also be provided to the Executive Director of the Fiscal Review Committee of the General Assembly, unless otherwise notified in writing by the Executive Director.

Item 2. Section B. of the Contract is hereby amended to read as follows:

B. CONTRACT TERM

This contract shall be effective for the period commencing on November 1, 2008 and ending on June 30, 2013. The contract term may be extended by written agreement executed by all parties hereto and approved by the appropriate University officials in accordance with applicable State laws and regulations.

Item 3. Section C.1. of the Contract is hereby amended to read as follows:

C.1. Maximum Liability. In no event shall the maximum liability to the University under this Contract exceed \$18,500,000. The maximum liability represents available funds for payment to UTRF and does not guarantee payment of any such funds to UTRF under this Contract unless such funds are appropriated by the General Assembly and actually received by the University, and the University requests work and UTRF performs said work.

Item 4. Exhibit A of the Contract is hereby replaced with Exhibit A-1 attached to this Amendment.

Item 5. The introductory clause of Section C.4. of the Contract is hereby amended to read as follows: "UTRF shall address any questions regarding the scope of services, invoice processing, and/or compensation, to:"

Item 6. Section D.4. of the Contract is hereby amended to read as follows: "Reimbursement for travel, meals or lodging must be made in accordance with University travel policies."

Item 7. The following sentence is added to the end of the last paragraph of Section D.5.: "The parties also recognize that wages and supplements of UT employees assigned to UTRF to staff the project and/or to work for Genera may be charged against funds made available under this Contract, and that the Genera Board,

consisting of a majority of outside directors, may authorize payment of Contract funds as reasonable additional compensation to General officers who are UT employees."

Item 8. The introductory clause of Section D.13, which states, "Unless otherwise agreed upon", is hereby amended to read as follows: "Except as otherwise agreed upon in writing by authorized officials of the Contractor and the University".

Item 9. Except as specifically amended by this Amendment, the terms of the Contract are hereby ratified and confirmed.

In witness of their acceptance of the terms of this Amendment, the parties have had this Amendment executed by their duly authorized representatives:

FOR UT Research Foundation

FOR University of Tennessee

Signature – Authorized Official

Signature – Authorized Official

Name (Printed)

Name (Printed)

Title

Title

Date

Date

Address

Department Name

Responsible Account (if applicable)

Telephone Number

Telephone Number

SSN or Federal Identification Number

Attachment Exhibit A-1

11709-004 #18 /v 2



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Rep. Charles Curtiss, Chairman
Representatives

Curt Cobb Donna Rowland
Curtis Johnson David Shepard
Gerald McCormick Curry Todd
Mary Pruitt Eddie Yokley
Craig Fitzhugh, *ex officio*
Speaker Jimmy Naifeh, *ex officio*

Sen. Douglas Henry, Vice-Chairman
Senators

Bill Ketron Reginald Tate
Doug Jackson Jamie Woodson
Paul Stanley
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

MEMORANDUM

TO: Dr. John Petersen, President
University of Tennessee

FROM: Charles Curtiss, Chairman, Fiscal Review Committee
Bill Ketron, Chairman, Contract Services Subcommittee

DATE: September 12, 2008

SUBJECT: **Contract Comments**
(Contract Services Subcommittee Meeting 9/9)

cc
BK

RFS# N/A

Department: University of Tennessee

Contractor: University of Tennessee Research Foundation (UTRF)

Summary: The proposed contract is for the provision of administrative and support services associated with the construction and operation of a pilot scale cellulosic ethanol biorefinery. The proposed contract has a term beginning November 1, 2008, through June 30, 2012.

Maximum liability: \$7,500,000

After review, the Fiscal Review Committee voted to recommend approval of the contract with the stipulations that measurable benchmarks be added to the contract and that the University provide a detailed report of all expenditures associated with the project to the Committee every six months.

cc: Ms. Sylvia S. Davis, Vice President for Administration & Finance


THE UNIVERSITY of TENNESSEE
KNOXVILLE, CHATTANOOGA, MARTIN, TULLAHOMA, MEMPHIS

VICE PRESIDENT FOR STRATEGIC PLANNING AND OPERATIONS

August 29, 2008

RECEIVED

AUG 29 2008

FISCAL REVIEW

Mr. Jim White
Executive Director
Fiscal Review Committee
320 Sixth Avenue, North – 8th Floor
Nashville, TN 37243-0057

Dear Mr. White:

The University of Tennessee is submitting for the committee's review a non-competitively bid contract with the University of Tennessee Research Foundation (UTRF) to provide administrative and programmatic support services to implement the university's biofuels initiative including the construction and operation of a pilot scale cellulosic biorefinery.

In FY 2008, the University was appropriated \$40.7 million to fund the construction of a pilot scale cellulosic ethanol biorefinery. In addition, UT was appropriated operating funds totaling \$8,250,000 million in FY 2008 and \$5,600,000 million in FY 2009 to support related operating and research costs and to establish switchgrass as the primary source of feedstock for the biorefinery. On October 11, 2007, the university received approval from the State Building Commission to make a grant of the construction funds to the UT Research Foundation to assist in the construction of the biorefinery. Since receiving this approval the university has decided to work with a different technology partner and we are in the process of working through the State Building Commission process to acknowledge this change. There is no change in the proposed agreement with UTRF as part of this initiative.

If you have questions or need additional information, please let me know.

Respectfully,

Sylvia Shannon Davis

Sylvia Shannon Davis
Vice President for Strategic Planning & Operations

Attachment

c: John D. Petersen
David Millhorn
Chris Cimino
Anthony Haynes
Butch Peccolo
Gary Rogers
Kelly Tiller

CONTRACT SUMMARY SHEET

021406

RFS #	Contract #

State Agency	State Agency Division
University of Tennessee	University-wide Administration

Contractor Name	Contractor ID # (FEIN or SSN)
University of Tennessee Research Foundation (UTRF)	<input type="checkbox"/> C- or <input type="checkbox"/> V- 62-6047697

Service Description
Provide administration & support services associated with the construction & operation of a pilot scale cellulosic ethanol biorefinery

Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
11/1/2008	6/30/2012	N/A	N/A

Mark Each TRUE Statement

<input type="checkbox"/> N/A Contractor is on STARS	<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts
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Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
332.10	N/A	N/A	N/A	N/A	N/A

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY 2009					\$ 626,000.00
FY 2010					1,504,000.00
FY 2011					2,596,000.00
FY 2012					2,774,000.00
TOTAL:	\$ -	\$ -	\$ -	\$ -	\$ 7,500,000.00

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Sylvia Shannon Davis, 865-974-2244
FY 2009			State Agency Budget Officer Approval VP for Strategic Planning & Operations
FY 2010			
FY 2011			
FY 2012			
			Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
TOTAL:	\$ 7,500,000.00	\$ -	
End Date	6/30/2012		

Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR) N/A

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg,ID,GG,GU)	<input type="checkbox"/> Other

Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

The State Building Commission has provided approval for the University to make a grant to the UTRF to assist in the construction of a pilot scale cellulosic biorefinery. The associated operating costs will be incurred by the UTRF making them the only viable entity to contract with for these services. Although the university has acquired a new technology partner since receiving approval from the State Building Commission, the role of UTRF has not changed and we are currently in the process of working with the State Building Commission to acknowledge this change.

**THE UNIVERSITY OF TENNESSEE
REQUEST: NON-COMPETITIVE CONTRACT**

APPROVED:

UT System Office Approval

Date

Each of the request items below indicates specific information that **must** be individually detailed or addressed as required. A request cannot be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) UT Tracking Number		
2) Campus/Institute Name	University of Tennessee University-wide Administration	
3) Short Description:	Provide administrative and programmatic support services to implement the university's biofuels initiative including the construction and operation of a pilot scale cellulosic ethanol biorefinery	
4) Proposed Vendor:	Name:	UT Research Foundation
	Vendor Number:	107614
	Vendor ID:	62-6047697
5) Contract Start Date:	November 1, 2008	
6) Contract End Date IF all Options to Extend the Contract are Exercised :	June 30, 2012	
7) Total Maximum Cost IF all Options to Extend the Contract are Exercised :	\$7,500,000	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/>	use of Non-Competitive Negotiation is in the best interest of the university
	<input type="checkbox"/>	only one uniquely qualified service provider able to provide the service
9) Detailed Description of Service to be Acquired :	<p>The State of Tennessee has appropriated funds to UT for the construction of a cellulosic ethanol biorefinery to aid in establishing Tennessee as a national leader in the development of alternative energy sources. This historic initiative also includes funding to establish switchgrass as the primary source of feedstock for this project. This contract provides funds to support the associated administrative and professional support services required from UTRF to support UT's biofuels initiative including the operating and research costs for the pilot scale cellulosic ethanol biorefinery.</p>	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	<p>On October 11, 2007, the University received approval from the State Building Commission to make a grant to the UT Research Foundation for the purpose of constructing a pilot scale cellulosic ethanol biorefinery. In addition to capital funding, there are also operating costs associated with the construction of the biofinery. Since receiving this approval, the university has decided to work with a different technolog partner and we are in the process of working through the State Building Commission process to acknowledge this change. Because there is no change in UTRF's role in the biofuels iniative, we are proceeding with this contract to provide UTRF with the necessary funding required to manage this part of the project.</p>	

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

This is a new initiative for the University of Tennessee and we are utilizing the services of the UT Research Foundation to assist with portions of this project.

12) Name & Address of the Proposed Vendor/Contractor(s):
(not required if proposed contractor is a state education institution)

UT Research Foundation
1534 White Avenue, Suite 403
Knoxville, TN 37996-1527

13) Evidence of the Proposed Vendor/Contractor's Experience and Length of Experience Providing the Service :

UTRF is a not-for-profit public benefit corporation formed to promote and support the university's research mission. The UT Research Foundation was organized in 1934 as the UT Research Corporation (UTRC). UTRC was reorganized and renamed UTRF in 2003.

14) Documentation of Office for Information Resources Endorsement: N/A
(required only if the subject service involves information technology)

15) Documentation of Department of Personnel Endorsement: N/A
(required only if the subject service involves training for state employees)

16) Documentation of State Architect Endorsement: N/A
(required only if the subject service involves construction or real property related services)

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

Because the UT Research Foundation is the entity authorized by the State Building Commission to assist the University in the construction of a pilot scale cellulosic ethanol biorefinery, the associated operating costs will be incurred through the UT Research Foundation making them the only viable entity to contract with for this effort.

18) Justification of Why the University Should Use Non-Competitive Negotiation Rather Than a Competitive Process:
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Due to the nature of the services acquired under this contract, services that support the construction of a pilot scale cellulosic ethanol biorefinery, the use of the UT Research Foundation is the only realistic option given they are the entity authorized to receive a grant from the University for the construction of this facility.

CONTRACT

between

**THE UNIVERSITY OF TENNESSEE
and
UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION**

This contract is made and entered into by the University of Tennessee, hereinafter referred to as "UT" or "University", and the University of Tennessee Research Foundation, hereinafter referred to as "UTRF" or "Contractor".

WHEREAS, UTRF is a not-for-profit public benefit corporation formed to promote, support, and carry out UT's research mission, to enhance the competitive position of UT for research and development funding, to facilitate expanded research and development activities at UT, and to facilitate the commercialization of UT research outcomes and the transfer of research-generated technology from UT to commercial and industrial enterprises in furtherance of the economic development of the State of Tennessee.

A. SCOPE OF SERVICES

The University, acting as stewards for the State of Tennessee's interest in developing a cellulosic biofuels industry in Tennessee, seeks the following services from UTRF in support of this research and economic development initiative:

1. Administrative, management and professional support services, including loaned employees, associated with the oversight of the construction and operation of a R&D pilot scale cellulosic ethanol biorefinery and switchgrass utilization demonstration project. Services include, but are not limited to, project oversight, facilities operations, and marketing services as mutually agreed upon.
2. Management of technology development and commercialization activities.

Services provided by UTRF under this Contract shall be planned, structured, and delivered to integrate, to the maximum extent practical, with the overall mission, goals, and program of the UT Biofuels Initiative being carried out simultaneously by UT.

The parties anticipate that UTRF will provide portions of this scope of services through its wholly owned subsidiary, Genera Energy LLC ("Genera"), and through Genera with its third-party collaborators.

In fulfilling its responsibilities, UTRF shall provide to the UT Executive Vice President and Chief Operating Officer and the UT Biofuels Initiatives Director of External Operations:

- a. Project schedule detailing significant events for completion by UTRF along with responsibilities expected of others involved in this project.
- b. Monthly written progress report to supplement weekly informal communications describing the project's progress.
- c. Unaudited monthly accounting reports.

The information above shall also be provided to the Executive Director of the Fiscal Review Committee of the General Assembly, unless otherwise notified in writing by the Executive Director.

B. CONTRACT TERM

This contract shall be effective for the period commencing November 1, 2008 and ending on June 30, 2012. The contract term may be extended by written agreement executed by all parties hereto and approved by the appropriate University officials in accordance with applicable State laws and regulations.

C. PAYMENT TERMS AND CONDITIONS

- C.1. Maximum Liability. In no event shall the maximum liability to the University under this Contract exceed \$7,500,000. The maximum liability represents available funds for payment to UTRF and does not guarantee payment of any such funds to UTRF under this Contract unless the University requests work and UTRF performs said work.
- C.2. Payment Methodology. UTRF shall be compensated based on the service requirements authorized by the University in a total amount not to exceed the Contract Maximum Liability established in Section C.1. Payments to UTRF by the University shall be made as follows:
 - a. The University shall reimburse UTRF each month for actual expenses, beyond those costs currently funded through other agreements with the University, for the administrative, management and professional support service functions associated with the oversight of the construction and operation of a pilot scale cellulosic ethanol biorefinery and switchgrass utilization demonstration, and costs of operating these research, development and demonstration facilities, separately or in collaboration with others in accordance with Exhibit A. These functions include, but are not be limited to, personnel cost for project oversight, management of technology development and commercialization, administrative and

professional services, and support staff; patent, copyright, and other intellectual property activities; normal office operating costs such as routine printing, communications, and supplies costs; equipment purchases; project related travel expenses; and project operating costs.

- b. Exhibit A provides an estimated allocation of cost by expenditure category and by fiscal year. The University shall in consultation with the UTRF review planned expenditures on a quarterly basis and may mutually agree to changes in maximum planned expenditures by category and fiscal year not to exceed the maximum liability as specified in Section C.1.

C.3. Invoice Requirements. UTRF shall submit invoices to UT no more often than monthly, with all necessary supporting documentation for services performed and expenses incurred under Section C.2.

C.4. Communications. Any questions regarding the scope of services, invoice processing, and/or compensation shall be addressed to:

Dr. Kelly Tiller
UT Biofuels Initiative
Director, External Operations
2506 Jacob Drive
Knoxville, TN 37996-4570
Phone: (865) 946-1130
Fax: (865) 946-1109

D. STANDARD TERMS AND CONDITIONS

- D.1. The University is not bound by this Contract until it is approved by the appropriate University official(s) indicated on the signature page of this Contract.
- D.2. This Contract may be modified only by a written amendment that has been executed and approved by the appropriate parties as indicated on the signature page of this Contract.
- D.3. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the University.
- D.4. Unless otherwise indicated on the reverse, if this Contract provides for reimbursement for travel, meals or lodging, such reimbursement must be made in accordance with University travel policies.
- D.5. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as

wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Contractor in connection with any work contemplated or performed relative to this Contract, and that no employee or official of the State of Tennessee holds a controlling interest in the Contractor. If the Contractor is an individual, the Contractor certifies that he/she is not presently employed by the University or any other agency or institution of the State of Tennessee; that he/she has not retired from or terminated such employment within the past six months; and that he/she will not be so employed during the term of this Contract.

For avoidance of doubt, the parties recognize that UTRF is staffed by UT employees who have no ownership or other equity financial interest in UTRF. The parties further recognize that Genera's Board includes UT employees and its officers include UT employees, but that no individual has any ownership or other equity financial interest in Genera.

- D.6. The Contractor shall maintain documentation for all charges against the University under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the University or the State of Tennessee Comptroller of the Treasury, or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles.
- D.7. No person on the grounds of disability, age, race, color, religion, sex, national origin, veteran status or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract. The Contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notice of nondiscrimination.
- D.8. The Contractor, being an independent contractor, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident to this Contract. The University shall have no liability except as specifically provided in this Contract.
- D.9. The Contractor shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.
- D.10. This Contract shall be governed by the laws of the State of Tennessee, which provide that the University has liability coverage solely under the terms and limits of the Tennessee Claims Commission Act.

D.11 The Contractor shall avoid at all times any conflict of interests between its duties and responsibilities as a Contractor and its interests outside the scope of any current or future Contracts. The following principles define the general parameters of a conflict of interests prohibited by the University:

- a. Contractor's outside interests shall not interfere with or compromise its judgment and objectivity with respect to its duties and responsibilities to the University.
- b. A Contractor shall not make or influence University decisions or use University resources in a manner that results in:
 - Financial gain outside any current or future Contracts for either the Contractor or his/her relatives or
 - Unfair advantage to or favored treatment for a third party outside the University.
- c. A Contractor's outside financial interests shall not affect the design, conduct, or reporting of research.

The Contractor certifies that it has no conflicts of interests and has disclosed in writing (including in Section D.5 above) the following:

- a. Any partners or employees of the Contractor who are also employees of the University.
- b. Any relatives of the Contractor's partners or employees who work for the University.
- c. Any outside interest that may interfere with or compromise his/her judgment and objectivity with respect to his/her responsibilities to the University.

D.12. If the Contractor fails to perform properly its obligations under this Contract or violates any term of this Contract, the University shall have the right to terminate this Contract immediately and withhold payments in excess of fair compensation for completed services. The Contractor shall not be relieved of liability to the University for damages sustained by breach of this Contract by the Contractor.

D.13. Unless otherwise agreed upon, it is understood by the Contractor that the University will possess all rights to any creations, inventions, other intellectual property, and materials, including copyright or patents in the same, which arise out of, are prepared by, or are developed in the course of the Contractor's performance under this Contract by University employees or by UTRF loaned employees. The Contractor and the University acknowledge and agree that the

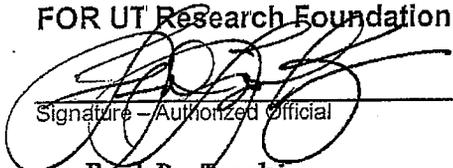
Contractor's work under this Contract shall belong to the University as "work-made-for-hire" (as such term is defined in U.S. Copyright Law).

Under the University's policy on patents, copyrights and other intellectual property, such intellectual property shall be assigned to UTRF for management, protection, technology transfer and commercialization.

- D.14. For personal, professional, and consultant services, the Contractor shall submit brief, periodic progress reports to the University and as requested. Such reports shall also be provided to the Executive Director of the Fiscal Review Committee of the General Assembly, unless otherwise notified in writing by the Executive Director.
- D 15. In compliance with the requirements of Chapter 878, Public Acts of 2006 of the State of Tennessee, for any contract for goods or services purchased by the University, the Contractor hereby attests that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performances of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of the Contract.

In witness of their acceptance of the terms of this agreement, the parties have had this Contract executed by their duly authorized representatives:

FOR UT Research Foundation



Signature - Authorized Official
Fred D. Tompkins

Name (Printed)

President

Title

UT Conference Center, Suite 211

Address

600 Henley Street

Knoxville, TN 37996-4122

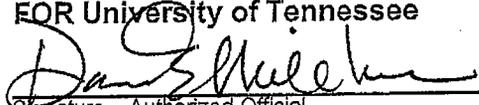
(865) 974-1882

Telephone Number

62-6047697

SSN or Federal Identification Number

FOR University of Tennessee



Signature - Authorized Official
David E. Millhorn

Name (Printed)

Executive Vice President

Title

Executive Vice President

Department Name

R170140010

Responsible Account (if applicable)

865-974-404

Telephone Number