



## Department of Energy

Washington, DC 20585

August 2, 2017

Dr. Thomas Zacharia  
Laboratory Director  
UT-Battelle, LLC  
1 Bethel Valley Road  
Oak Ridge, Tennessee 37830

SSA-2017-01

Dear Dr. Zacharia:

The Office of Enterprise Assessments' Office of Enforcement has completed its investigation into the facts and circumstances associated with a security event discovered on March 28, 2016, involving the unauthorized disclosure of classified information and the introduction of classified information into unapproved information systems at the Oak Ridge National Laboratory (ORNL). UT-Battelle, LLC (UT-Battelle) documented the security event in the Safeguards and Security Information Management System under report OSO-03/2016-0002.

On March 28, 2016, UT-Battelle discovered that presentations containing classified information had been processed on unapproved information systems over a period of approximately five years. The classified presentations were also stored on unapproved servers, information systems, and removable electronic media and were transmitted by unauthorized means. In addition, classified information was visually presented to uncleared students on a specific program, including three foreign nationals from non-sensitive countries. The highest classification level and category of information contained in the presentations is Secret/Restricted Data, including No Foreign.

Although the classified information involved in this security event remained within the confines of the ORNL internal network and was visually accessible to uncleared individuals briefly during presentations held at ORNL, DOE considers this longstanding, preventable event to be security significant. UT-Battelle did not effectively implement controls to protect classified information from unauthorized disclosure through requisite classification reviews, even though the information was intended for public release. Furthermore, UT-Battelle's initial response and inquiry process for this incident of security concern were not thorough.

In accordance with 10 C.F.R. § 824.4(e), *Civil Penalties*, the Office of Enforcement has elected to resolve potential noncompliances with requirements enforceable under 10 C.F.R. Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*, and documented in the Office of Enforcement's investigation report, dated April 14, 2017, through execution of a Settlement Agreement. In deciding to enter into this Settlement Agreement, DOE considered UT-Battelle's proactive response to a self-identified negative trend



regarding security incidents at ORNL, as well as UT-Battelle's evaluation of its classified information security program elements to determine whether systemic weaknesses collectively contributed to this trend. DOE also placed considerable weight on the appropriate set of corrective actions that UT-Battelle identified through its common cause analysis and the reevaluation of this event's security incident inquiry.

DOE reserves the right to reopen this investigation if DOE later becomes aware that UT-Battelle provided any false or materially inaccurate information. Further, if there is a recurrence of classified information security deficiencies similar to those identified in this Settlement Agreement, or a delay in completing all action items prescribed in the Settlement Agreement, then the Office of Enforcement may pursue additional enforcement activity. The Office of Enforcement, Office of Science, and Oak Ridge National Laboratory Site Office (OSO) will continue to closely monitor UT-Battelle's implementation of DOE classified information security requirements until the issues associated with this Settlement Agreement are fully resolved.

Enclosed please find two signed copies of the Settlement Agreement. Please sign both, keep one for your records, and return the other copy to the Office of Enforcement within one week from the date of receipt. Please follow all instructions specified in the enclosure. By signing this Settlement Agreement, you agree to comply with all of the terms, including payment of the monetary remedy, specified in Section IV of the Settlement Agreement and in the manner prescribed therein.

If you have any questions concerning this Settlement Agreement, please contact me at 301-903-7707, or your staff may contact Ms. Carrienne Zimmerman, Director, Office of Security Enforcement, at 301-903-0107.

Sincerely,



Steven C. Simonson  
Director  
Office of Enforcement  
Office of Enterprise Assessments

Enclosure: Settlement Agreement (SSA-2017-01)

cc: Johnny Moore (SC-OSO)  
Debbie Jenkins (UT-Battelle)

In the matter of ) Report No. SSIMS – OSO-03/2016-0002  
) Office of Enforcement Investigation Report  
) (April 14, 2017)  
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)  
UT-Battelle, LLC )  
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)  
) Settlement Agreement SSA-2017-01

SETTLEMENT AGREEMENT BETWEEN THE U.S. DEPARTMENT OF ENERGY AND  
UT-BATTELLE, LLC

I

UT-Battelle, LLC (UT-Battelle) is responsible for the management and operation of the Department of Energy (DOE) Oak Ridge National Laboratory (ORNL). UT-Battelle is the prime contractor under Contract No. DE-AC05-00OR22725 (Contract) entered into with the DOE Oak Ridge National Laboratory Site Office (OSO).

II

On March 28, 2016, UT-Battelle discovered and initially reported in the Safeguards and Security Information Management System (SSIMS) a security incident involving the development of presentations that contained classified information but were processed on unapproved information systems; stored on unapproved servers, information systems, and removable electronic media; transmitted by unauthorized means within the confines of ORNL’s internal network; and were visually presented to uncleared students of a specific program, including three foreign nationals from non-sensitive countries (hereafter the “security event”). UT-Battelle’s subsequent classification review of the presentations determined that the highest classification level and category of information contained in the presentations is Secret/Restricted Data, including No Foreign.

On August 1, 2016, UT-Battelle closed its security incident inquiry (hereafter the “initial inquiry”) in SSIMS, Report No. SSIMS – OSO-03/2016-002. The initial inquiry determined that the presentation originally developed and presented in 2011 contained classified information in the “notes” section of one slide. Revisions in 2012 added two other slides containing classified information, and a previous slide became classified due to new classification guidance. The classified information remained in subsequent presentations, which were presented each year through 2016.

UT-Battelle believes the original 2011 presentation was reviewed for classification and determined to be unclassified; therefore, driving the later decision-making regarding the handling of the document as unclassified. However, there is no evidence that any version of this presentation was processed through a formal review and approval process that requires a classification review by the classification officer for information in a classified subject area prior to public release. Given the audience for this presentation, such a process would have been required initially and each of the three times it was revised (i.e., 2012, 2014, and 2016).

In early 2016, before discovering the security event, UT-Battelle noted that the number of security incidents at ORNL was increasing. As a result, UT-Battelle began evaluating its internal processes and procedures governing the performance of classified work to identify common causes of these security incidents. The self-disclosing security event occurred before completion of the common cause analysis in June 2016, which identified opportunities for UT-Battelle to be better prepared to identify and properly control potentially classified information. Although the common cause analysis identified elements that should improve the classified information protection program at ORNL, it did not address the programmatic deficiencies in the area of classification review and approval of information intended for public release.

On October 31, 2016, pursuant to 10 C.F.R. § 824.5, and based on the UT-Battelle initial inquiry report, dated August 1, 2016, and discussions with OSO and Office of Science, the Office of Enforcement initiated an investigation into the security event. At the time of that investigation, the Office of Enforcement could not determine the extent of disclosure and the overall security significance of this security event because of UT-Battelle's ineffective initial inquiry process and cyber sanitization activities. In addition, the initial causal analysis and corrective actions for the security event were inadequate to prevent the likelihood of recurrence. In January 2017, UT-Battelle reopened the security incident inquiry in SSIMS to address the initial inquiry deficiencies and ensure due diligence in identifying and sanitizing all affected information systems. UT-Battelle also updated its causal analysis and corrective actions for the security event.

On January 24, 2017, the Office of Enforcement conducted a follow-up investigation based on UT-Battelle's additional security incident inquiry activities. The Office of Enforcement Investigation Report, dated April 14, 2017, identified several potential noncompliances with DOE classified information security requirements. Specific deficiencies were evident in the areas of correctly identifying, obtaining the requisite classification review of, and appropriately marking classified information; conducting an adequate and thorough security incident inquiry; using approved information systems to develop, store, and disseminate classified information; protecting and controlling classified information from unauthorized disclosure; and conducting a comprehensive causal analysis and implementing adequate corrective actions designed to prevent recurrence.

On October 11, 2016, before the Office of Enforcement's initial investigation, UT-Battelle sent a letter to the Office of Enforcement requesting a Settlement Agreement to resolve potential noncompliances with DOE classified information security requirements enforceable under 10 C.F.R. Part 824 because of the following actions UT-Battelle had taken: (a) identifying a potential negative trend through its contractor assurance process, completing a common cause

analysis, and developing an extensive corrective action plan; (b) initiating, through the responsible Associate Laboratory Director for the security event, corrective actions based on the results of a chartered Directorate team evaluation of current practices and identified opportunities for improvement in requirements and communication methods; (c) conducting an analysis of the Directorate's Derivative Classifiers to ensure that appropriate resources were available and that responsibilities and authorities were accurate and clearly defined; (d) evaluating the ORNL Publication Tracking System and Research Hazard Analysis and Control System to identify opportunities for additional system-driven requirements for classification reviews; (e) developing and implementing a series of formal briefings and trainings for Directorate Group Leaders and Derivative Classifiers to raise awareness and reinforce expectations for performing work in classified subject areas; and (f) determining the need for a comprehensive management assessment to evaluate the effectiveness of the issues management and analysis process as applied to incidents of security concern at ORNL.

### III

Pursuant to 10 C.F.R. § 824.4(e), DOE may enter into a settlement, with or without conditions, at any time during an outstanding enforcement proceeding if the settlement is consistent with the objectives of the Atomic Energy Act of 1954, as amended, and DOE classified information protection requirements enforceable under 10 C.F.R. Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*.

To resolve potential noncompliances with DOE classified information security requirements and in consideration of UT-Battelle's final inquiry, causal analyses, and associated corrective actions for the security event, which DOE found to be comprehensive and appropriate, DOE has elected to enter into settlement. DOE and UT-Battelle have reached agreement to resolve this matter through execution of this Settlement Agreement.

### IV

Accordingly, the terms of this Settlement Agreement are as follows:

In consideration of the mutual agreements set forth in this section, the sufficiency and adequacy of which are acknowledged by DOE and UT-Battelle (hereafter the "Parties"), the following terms represent agreement by the authorized representatives of the Parties to resolve by settlement the potential noncompliances at ORNL, in lieu of an enforcement action that DOE may issue pursuant to 10 C.F.R. § 824.6.

1. UT-Battelle shall fully implement all corrective actions previously committed to in its corrective action plan resulting from the June 2016 *Common Cause Analysis Report for Classification Incidents of Security Concern (IOSCs)*. In addition, UT-Battelle shall fully implement all compensatory measures outlined in the UT-Battelle letter dated October 11, 2016, requesting settlement. UT-Battelle shall ensure that its previously planned commitments, identified in the June 2016 common cause analysis report and the October 11, 2016, letter, address the following areas of emphasis:

- a. UT-Battelle shall ensure that corrective actions focus on more effective project execution as it relates to the handling of classified information (i.e., identification, review, and marking of classified information; information protection and control; and enhancing classified cyber security).
  - b. UT-Battelle shall ensure that corrective actions focus on a more thorough event response when necessary (i.e., enhancing classified cyber security through more effective and efficient cyber sanitization; security incident inquiries; causal analysis; and corrective actions).
  - c. UT-Battelle shall notify the Office of Enforcement and OSO in writing upon completion of the actions specified in item 1 above.
  - d. UT-Battelle shall provide to the Office of Enforcement and OSO copies of the results of the final effectiveness review that the UT-Battelle corrective action process requires.
2. UT-Battelle shall pay the amount of \$120,000, reflecting an agreed-upon monetary remedy, in lieu of the issuance of an enforcement action with the proposed imposition of a civil penalty pursuant to 10 C.F.R. § 824.6.
  3. UT-Battelle agrees to return a signed copy of this Settlement Agreement, within one week from the date of receipt, to the address provided in item 5 below.
  4. The effective date of this Settlement Agreement shall be the date upon which UT-Battelle signs this Settlement Agreement.
  5. UT-Battelle shall remit the monetary remedy of \$120,000 by check, draft, or money order payable to the Treasurer of the United States (Account Number 891099) within 30 calendar days after the effective date of this Settlement Agreement. To remit the monetary remedy by electronic funds transfer (EFT), please have your accounting department contact the Office of Enforcement's Docket Clerk (phone 301-903-0107) for EFT wiring instructions. If payment is made by check, draft, or money order, it shall be sent by overnight carrier to:  
  
Director, Office of Enforcement  
Attention: Office of the Docketing Clerk, EA-10  
U.S. Department of Energy  
19901 Germantown Road  
Germantown, MD 20874-1290
  6. This Settlement Agreement shall constitute a full and final settlement of the potential noncompliances identified in the referenced investigation report, subject to the following:
    - (a) UT-Battelle's payment of the monetary remedy in accordance with item 5 above; and
    - (b) UT-Battelle's completion of all actions set forth in item 1 above to the satisfaction of OSO and the Office of Enforcement.

7. Neither the monetary remedy nor any costs, as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, incurred by, for, or on behalf of UT-Battelle relating to coordination and cooperation with DOE concerning the investigation of matters covered by this Settlement Agreement, shall be considered allowable costs under the Contract. However, costs incurred by, for, or on behalf of UT-Battelle relating to the development and implementation of corrective actions, including costs associated with the effectiveness review required under item 1.d. above, may be considered allowable costs under the Contract.
8. This Settlement Agreement does not preclude DOE from reopening the investigation and issuing an enforcement action under 10 C.F.R. § 824.6 with respect to a potential noncompliance if: (a) after the effective date (as defined in item 4 above), DOE becomes aware of any false or materially inaccurate facts or information provided by UT-Battelle; (b) there is a recurrence of classified information security deficiencies similar to those identified above; or (c) UT-Battelle fails to complete all actions identified in item 1 above in a timely and effective manner to prevent recurrence.
9. Any modification of this Settlement Agreement requires the written consent of both Parties.
10. UT-Battelle waives any and all rights to appeal or otherwise seek judicial or administrative review of the terms of this Settlement Agreement. DOE retains the right to judicially enforce the provisions of this Settlement Agreement by all available legal means.
11. This Settlement Agreement is issued pursuant to DOE's authority under Section 234B of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2282b), and the implementing provisions of Part 824 governing enforcement of DOE classified information security requirements.
12. This Settlement Agreement shall become a Final Order after the signed copy, referenced in item 3 above, is filed by the Office of Enforcement's Office of the Docketing Clerk.

On behalf of my respective organization, I hereby agree to and accept the terms of the foregoing Settlement Agreement.

FOR Office of Enforcement

FOR UT-Battelle, LLC

 Date 8/2/2017

 Date 8/4/2017

Steven C. Simonson  
 Director  
 Office of Enforcement  
 Office of Enterprise Assessments

Dr. Thomas Zacharia  
 Laboratory Director  
 UT-Battelle, LLC