

STANDARD USER AGREEMENT
PROPRIETARY
No. UF-04-XXX

THIS AGREEMENT, entered into this the ____ day of _____, _____, by and between **UT-BATTELLE, LLC**, (hereinafter called "**Contractor**" or "**Facility Operator**"), managing the Oak Ridge National Laboratory under Contract No. **DE-AC05-00OR22725 with the UNITED STATES OF AMERICA** (hereinafter called the "Government"), as represented by the **UNITED STATES DEPARTMENT OF ENERGY** (hereinafter called "DOE"), and _____ (hereinafter called the "User"):

ARTICLE I — SCOPE OF SERVICES

Subject to the terms and conditions set forth below, the Contractor shall make available to designated employees or representatives (hereinafter referred to as "Participants," individually or collectively, as the context suggests) of User certain facilities, equipment, services, information and/or material (hereinafter referred to as the "Activity") as described in Appendix A, which is attached hereto and hereby made a part of this Agreement.

ARTICLE II — COSTS

Upon request by User and at the Contractor's discretion, limited support services may be provided to the User. Should such support be provided, the Contractor will retain its employees assigned to User support functions on its payroll, and costs associated with the User support services will be paid by the User to the account of DOE in accordance with DOE's pricing policy as set forth in Appendix A. Any invention or discovery which UT-Battelle employees may make or other Intellectual Property which they may generate during the course of providing such support services (which are intended to be non-collaborative) will be governed by the provisions of Contract No. DE-AC05-00OR22725.

ARTICLE III — BILLING

The Contractor will invoice the User for the appropriate level of activity as defined in Appendix A, at the intervals and to the billing address specified therein. Each such invoice shall be paid promptly by User upon receipt and in accordance with instructions furnished therewith.

ARTICLE IV — ADMISSION; PERSONNEL RELATIONSHIPS

- A. Each admission or readmission of a Participant to the Activity under this Agreement shall be subject to and implemented under the applicable admission regulations and procedures of the Contractor and DOE. Each Participant shall execute Appendix B, which is attached hereto and made a part of this Agreement, and deliver it to the Contractor on or before admission to the Activity.
- B. Participants shall be considered employees or representatives of User during all activities under this Agreement and shall not be considered employees of the Contractor or DOE for

any purpose. However, the occupational activities of Participants shall be subject to the administrative and technical oversight of the Contractor during and in connection with such participation in the Activity, and the Participant shall therefore abide by and comply with all applicable rules, regulations and requirements of the Contractor and DOE with regard to such Activity including, but not limited to, those pertaining to security, safety, operating and health-physics procedures, environmental protection, access to information, hours of work, and conduct. User shall obtain such agreements from each Participant as necessary to implement the provisions of this Agreement.

ARTICLE V — SCHEDULING

The User understands and agrees (a) that the Activity is subject to the priority of the Contractor's work for the Government and on a nonpriority basis in regard to other users, and (b) that the Contractor, through its cognizant user facility administrator, shall have sole responsibility and discretion for allocating and scheduling usage of the facilities, equipment, services, materials and/or information needed for or involved in the Activity.

ARTICLE VI — MATERIALS

It is recognized that any material to be supplied by the User may be damaged, consumed, or lost. Materials (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in their then condition by the User at the User's expense.

ARTICLE VII — PATENT AND TECHNICAL DATA PROVISIONS

A. Patent Rights

1. Definitions

- a. "User" means the person or entity with which this Agreement is made.
- b. "Subject Invention" means any invention or discovery of the User conceived or first actually reduced to practice in the course of or under this Agreement, and includes any art, method, process, machine, manufacture design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.
- c. "Facility Operator" means the operating Contractor which manages and operates the Government-owned, contractor-operated Facility where the work under this Agreement is to be performed.
- d. "Patent Counsel" means the DOE Patent Counsel assisting the User Facility Operator.

2. Rights of the User — Election to Retain Rights

- a. Subject to the provisions of paragraph 3 of this clause with respect to any Subject Invention reported and elected in accordance with paragraph 4 of this clause, the User may elect to obtain the entire right, title, and interest in any patent application filed in any country on a Subject Invention and in any resulting patent secured by the User.

Where appropriate, the filing of patent applications by the User is subject to DOE security regulations and requirements.

- b. The User reserves an irrevocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the User does not elect to retain title or in which the Government acquires title. The license shall extend to the User's domestic subsidiaries and affiliates, if any, within the corporate structure of which the User is a part and shall include the right to grant sublicenses of the same scope to the extent the User was legally obligated to do so at the time this Agreement was entered into. The license shall be transferable only with approval of DOE except when transferred to the successor of that part of the User's business to which the invention pertains.

3. Rights of Government — Terms and Conditions of Waived Rights

- a. The User shall promptly provide the Government with a copy of any patents issued on Subject Inventions.
- b. Notwithstanding any other provision of this clause, the User agrees 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 User 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.
- c. Title to any Subject Invention shall revert to the Government in the event the Agreement required by paragraph 3.b of this clause has not been obtained or waived with respect to such invention or because a licensee of the exclusive right to use or sell any such invention in the United States is in breach of such Agreement.

The provisions of the following paragraphs (d) and (e) are applicable only where work under the Agreement is performed at the following identified User Facilities:

Advanced Propulsion Technology Center	Fuel, Engines, and Emissions Research Center	National Transportation Research Center
Buildings Technology Center	High Temperature Materials Laboratory	Physical Properties Research Facility
Cooling, Heating and Power Integration Laboratory	Metals Processing Laboratory Users Center	Power Electronics and Electric Machinery

- d. The User hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each Subject Invention throughout the world for or on behalf of the United States.
- e. The User agrees that with respect to any Subject Invention in which it has acquired title, DOE has the right to require the User, or an assignee or an exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the User, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such license itself if DOE determines that:
 - (i) such action is necessary because the User 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;
 - (ii) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the User, assignee, or licensees; or
 - (iii) such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the User, assignee, or licensees.

4. Invention Identification, Disclosures, and Reports

The User shall furnish the Patent Counsel a written report containing full and complete technical information concerning each Subject Invention of the User within six months after conception or first actual reduction to practice, whichever occurs first, in the course of or under the Agreement, but in any event prior to any sale, public use or public disclosure of such invention known to the User. The report shall identify the Agreement and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of rights under this clause. When an invention is reported under this paragraph 4, it shall be presumed to have been made in the manner specified in Section (a) (1) and (2) of 42 U.S.C. 5908.

5. Limitation of Rights

Nothing contained in this patent rights clause shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention, except as set forth in the Facilities License of paragraph 6.

6. Facilities License

In addition to the rights of the Parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this Agreement, the User agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up

license in and to any inventions or discoveries, regardless of when conceived or actually reduced to practice or acquired by the User, which at any time through completion of this Agreement are owned or controlled by the User and are incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement (a) to practice or to have practiced by or for the Government at the facility, and (b) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

B. Patent and Copyright Indemnity - Limited

If and to the extent required by law, the User shall indemnify the Government and Contractor and their officers, agents, and employees against liability, including costs, for infringement of any United States patent or copyright arising out of any acts performed or directed by the User to be performed under the Agreement. Further, the foregoing indemnity shall not apply unless the User shall have been informed in a reasonable time by the Contractor or the Government of the suit or action alleging such infringement, and such indemnity shall not apply to a claimed infringement which is settled without the consent of the User unless required by a court of competent jurisdiction.

C. Rights in Technical Data – Use of Facility

1. Definitions

- a. "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work to be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media, such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software databases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data, as used in this subpart, does not include financial reports, costs analyses, and other information incidental to contract administration.
- b. "Proprietary Data" means Technical Data which embody trade secrets, developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:
 - (i) are not generally known or available from other sources without obligation concerning their confidentiality;
 - (ii) have not been made available by the owner to others without obligation concerning their confidentiality; and

- (iii) are not already available to the Government without obligation concerning their confidentiality.
 - c. "Unlimited Rights" means rights to use, duplicate or disclose Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.
- 2. The User agrees to deliver to DOE a nonproprietary description of the work performed under this Agreement.
- 3. The User agrees to furnish to DOE or the Facility Operator those data, if any, which are (a) related to the health and safety of personnel at the facility, or (b) necessary to operate the facility. Any data furnished to DOE or the Facility Operator shall be deemed to have been delivered with "Unlimited Rights" unless marked as "Proprietary Data" of the User. The Government shall not disclose properly marked Proprietary Data of the User outside the Government and the Facility Operator. The Government reserves the right to challenge the proprietary nature of any markings on data.
- 4. The Government shall have unlimited rights in any Technical Data (including Proprietary Data) which are not removed from the facility by the User or before termination of the Agreement. The Government shall have unlimited rights in any Technical Data (including Proprietary Data) which are incorporated into the facility or equipment under the Agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation.
- 5. The following legal notice shall be affixed to each report or publication resulting from this Agreement which may be distributed by the User:

DISCLAIMER NOTICE

This document was prepared by _____, as a result of the use of facilities of the U.S. Department of Energy (DOE) which are managed by UT-BATTELLE, LLC. Neither UT-BATTELLE, LLC, DOE, or the U.S. Government, nor any person acting on their behalf: (a) makes any warranty or representation, express or implied, with respect to the information contained in this document; or (b) assumes any liabilities with respect to the use of, or damages resulting from the use of any information contained in the document.

D. Notice and Assistance Regarding Patent and Copyright Infringement.

- 1. The User shall report to the Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the User has knowledge.
- 2. 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 Agreement or out of use of any supplies furnished or work or services performed hereunder, the User shall furnish to the Government, when requested by the Government, all evidence and information in

possession of the User pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the User has agreed to indemnify the Government.

ARTICLE VIII — LIABILITY

- A. Neither the Government, DOE, the Contractor, nor persons acting on their behalf will be responsible for any injury to or death of persons or other living things or damage to or destruction of property or for any other loss, damage or injury of any kind whatsoever resulting from the furnishing of facilities, equipment, material, information or personnel under this Agreement, and not directly resulting from the sole fault or negligence of the Government, DOE, the Contractor, or persons acting on their behalf.
- B. Neither the Government, DOE, the Contractor, nor persons acting on their behalf will be responsible, irrespective of cause, for failure to furnish the facilities, equipment, material, information or personnel under this Agreement at any particular time or in any particular manner.
- C.
 - 1. If, and to the extent permitted by law applicable to the User, and except for any liability resulting from any negligent or intentional acts or omissions of the Contractor, the User indemnifies the Government and the Contractor for all damages, costs and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the User, its assignees or licensees, which was derived from the work performed under this Agreement. In respect to this Article, neither the Government nor the Contractor shall be considered assignees or licensees of the User, as a result of reserved Government and Contractor rights. The indemnity set forth in this paragraph shall apply only if the User shall have been informed as soon and as completely as practical by the Contractor and/or the Government of the action alleging such claim and shall have been given an opportunity, to the extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Contractor and/or the Government shall have provided reasonably available information and reasonable assistance requested by the User. No settlement for which the User would be responsible shall be made without the User's consent unless required by final decree of a court of competent jurisdiction.
 - 2. If, and to the extent permitted by law applicable to the User, the User agrees to indemnify and save harmless the Government, DOE, the Contractor, and persons acting on their behalf from any costs and expenses resulting from loss, damage, destruction, misuse or alteration to or of property of the U.S. Government to the extent that such loss, damage, destruction or alteration is caused or contributed to by the intentional or negligent act of User or its employees or representatives.
- D. The foregoing provisions of this Article VIII shall have no application to public liability for nuclear incident as defined and provided for in the Atomic Energy Act of 1954, as amended, compensation for which shall be in accordance with such law.

ARTICLE IX — EXPORT CONTROLS

User hereby acknowledges notice that the export of goods and/or Technical Data from the United States may require some form of export control license from the U. S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

ARTICLE X — ENTIRE AGREEMENT

It is expressly agreed by the parties hereto that this Agreement constitutes the entire and only Agreement between the parties with respect to the subject matter herein; and that this Agreement cannot be amended nor any provision thereof waived except by an instrument in writing and duly executed on behalf of each of the parties hereto by the duly authorized representative of each party.

ARTICLE XI — TITLE AND ADMINISTRATION

It is understood and agreed that this Agreement is entered into by the Contractor for and on behalf of the Government; that the Contractor is authorized to and will administer this Agreement in other respects for DOE, unless otherwise specifically provided for herein; that administration of this Agreement may be transferred from the Contractor to DOE or its designee, and in case of such transfer and notice thereof to the User, the Contractor shall have no further responsibilities hereunder.

ARTICLE XII — TERMINATION

Either party hereto may terminate this Agreement for any reason at any time by giving not less than thirty (30) days prior written notice to the other party. The Contractor reserves the right to immediately cancel this Agreement without regard to the aforesaid written notice when cancellation of this Agreement is determined to be necessary to the national defense and security of the United States. Such termination shall only affect the term of this Agreement, and shall otherwise be without prejudice to the rights of the parties hereunder which may have previously accrued.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month, and year first above written.

FOR USER

FOR UT-BATTELLE, LLC

BY: _____

BY: _____

NAME (typed): _____

NAME (typed): _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

SAMPLE

APPENDIX A

To User Agreement No.

between

UT-BATTELLE, LLC

and

(USER)

Pursuant to the above identified User Agreement and subject to the terms and conditions stated therein, **UT-Battelle** shall provide, furnish, or otherwise make available to duly authorized employees or representatives of User the following facilities, equipment, services, material and/or information for the following purpose:

Term:	Billing address:
Estimated Time of Use:	
Cost:	
Billing period(s) or interval(s):	Upon receipt of invoice
ORNL PI:	

Proposed on behalf of USER

Accepted on behalf of UT-Battelle LLC

By:

By:

Name (typed):

Name (typed): Joyce W. Shepherd, Director
Sponsored Research
Technology Transfer&Economic Dev.

Title:

Title

Date:

Date:

SAMPLE