

Proprietary User Agreement

No. PR-2X-XXXX

BETWEEN

UT-BATTELLE, LLC.
("CONTRACTOR")

Operator of Oak Ridge National Laboratory (hereinafter "Laboratory") under U.S. Department of Energy (DOE) Contract No. DE-AC05-00OR22725 and

NAME OF USER INSTITUTION
("USER")

(Collectively, "the Parties")

The obligations of the Contractor may be transferred and shall apply to any successor in interest to said Contractor continuing the operation of the DOE facilities involved in this Proprietary User Agreement.

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR will make available to employees, consultants and representatives of USER (hereinafter called "Participants") certain Laboratory Proprietary User facilities, which may include equipment, services, information and other material, for purposes as described in the Appendix A which is attached to and made a part of this Agreement. Future Appendices referencing this Agreement may be created for identifying additional facilities and/or purposes during the term of this Agreement (see Article II). Such additional Appendices will be considered to be part of this Agreement upon written acceptance by the Parties

In order for the USER to gain access to and/or use of the User facilities, the research must first receive programmatic approval of the facility director and available scheduling therefor. It is understood and agreed that the approval determinations of the director of the facility are final. To receive such approval, the USER is obligated to provide a proposal disclosing a functional, non-proprietary, publicly releasable description of the experimental work, since such information is essential to the CONTRACTOR to operate the facility.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall be effective as of the date on which it is signed by the last of the Parties. This Agreement shall remain in effect for five years and will be automatically renewed in the absence of a prior written objection to such renewal by either Party.

ARTICLE III. COST, BILLING AND PAYMENT OF EXPENSES

USER shall fully fund its own experiments using no federal funds. Activities engaging Laboratory scientist(s) in collaborative research are not eligible for this Agreement. Upon request by USER and at the Contractor's discretion, limited support services may be provided to USER. In advance of providing any such limited support services, Contractor shall provide to USER an estimated cost for those requested limited support services. Should such support be provided, full costs associated with such support shall be paid by USER. Contractor will be reimbursed by USER for the account of DOE in accordance with DOE's pricing policy, which provides for full cost recovery.

No work may begin until USER's advance payment is received by CONTRACTOR as specified in the applicable Appendix A. All advance payments must be made in US dollars.

If the estimated cost is increased during the project or the project is expected to be renewed, an additional advance payment may be requested of USER. CONTRACTOR is not obligated to continue to provide USER access to and/or use of the User Facility unless it is holding an adequate advance.

Upon completion of the project there will be a reconciliation of the total costs incurred to total payments received, and a final expense statement along with any remaining advance will be returned to USER.

ARTICLE IV: ADMISSION REQUIREMENTS

USER and Participants are subject to the administrative and technical supervision and control of CONTRACTOR and will comply with all applicable rules of CONTRACTOR and DOE with regard to admission (including remote access as well as physical access) to and use of the User Facility, including safety, operating and health physics procedures, environment protection, access to information, cyber security, hours of work, and conduct. Participants shall execute any and all documents required by CONTRACTOR acknowledging and agreeing to comply with such applicable rules of CONTRACTOR. Participants will not be considered employees of CONTRACTOR for any purpose.

ARTICLE V. PROPERTY AND MATERIALS***

Note: Provisions of this Article do not apply to Technical Data, which are addressed in Article IX.

USER may be permitted by the Contractor to furnish equipment, tooling, test apparatus, or materials necessary to assist in the performance of its experiment(s) at the User Facility. Such items shall remain the property of USER. Unless the Parties otherwise agree, all such property furnished by USER or equipment and test apparatus provided by USER will be removed by USER within sixty (60) days of the earlier of the termination of the specific project or expiration of the applicable Appendix A or will be disposed of as directed by USER at USER's expense. Any equipment that becomes integrated into the User Facility shall be the property of the Government. USER acknowledges that any material supplied by 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 USER at USER's expense. USER will return User Facilities and equipment utilized in their original condition except for normal wear and tear.

CONTRACTOR shall have no responsibility for USER's property at the User facility other than loss or damage caused by willful misconduct or gross negligence of CONTRACTOR or its employees.

Personal property produced or acquired during the course of this Agreement shall be disposed of as directed by the owner at the owner's expense.

ARTICLE VI: SCHEDULING***

USER understands that CONTRACTOR will have sole responsibility and discretion for allocating and scheduling usage of the User Facilities and equipment needed for or involved under this Agreement.

ARTICLE VII: INDEMNITY AND LIABILITY***

- A. Personnel Relationships** - USER shall be responsible for the acts or omissions of Participants.
- B. Product Liability** - To the extent permitted by US federal and the USER's US State law, if USER utilizes the work derived from this Agreement in the making, using, or selling of a product, process or service, then USER hereby agrees to hold harmless and indemnify CONTRACTOR and the United States Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of such utilization of the work by or on behalf of USER, its assignees or licensees.
- C. General Indemnity** - To the extent permitted by US federal and the USER's US State law, USER hereby agrees to indemnify and hold harmless CONTRACTOR and the United States Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, arising out of the performance of this Agreement or arising out of the use of the services performed, materials supplied or information given hereunder by any persons including the USER, and not directly resulting from the fault or negligence of the Contractor or the United States Government, or persons acting on their behalf.
- D. Patent and Copyright Indemnity—Limited** - To the extent permitted by US federal and the USER's US State law, USER shall fully indemnify the Government and CONTRACTOR and their officers, agents, and employees for infringement of any United States patent or copyright arising out of any acts required or directed or performed by USER under the Agreement to the extent such acts are not normally performed at the facility.
- E.** The liability and indemnity provisions in paragraphs B, C and D above shall not apply unless USER shall have been informed as soon as practicable by CONTRACTOR or the Government of the suit or action alleging such liability or infringement, and such indemnity shall not apply to a claimed liability or infringement that is settled without the consent of USER unless required by a court of competent jurisdiction.
- F. General Disclaimer** - THE GOVERNMENT AND CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE USER FACILITY FURNISHED

HEREUNDER. IN ADDITION, THE GOVERNMENT, CONTRACTOR AND USER MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT, CONTRACTOR AND/OR USER SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO USE OF SUCH FACILITIES, RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

FURTHERMORE, 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.

G. Notice and Assistance Regarding Patent and Copyright Infringement

- a. 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 USER has knowledge.
- b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, USER shall furnish to the Government when requested by the Government, all evidence and information in possession of USER pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where USER has agreed to indemnify the Government.

ARTICLE VIII. PATENT RIGHTS***

A. Definitions

1. "Subject Invention" means any invention or discovery of USER conceived or first actually reduced to practice in the course of or under this Agreement.
2. "Patent Counsel" means the DOE Patent Counsel assisting the Facility Operator.

B. Rights of USER – Election to Retain Rights

With respect to any USER Subject Invention, which includes inventions of any Participants, reported and elected in accordance with paragraph (C) of this clause, 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 USER. Where appropriate, the filing of patent application by USER is subject to DOE security regulations and requirements.

C. Invention Identification, Disclosures, and Reports

USER shall furnish the Patent Counsel a written report concerning each USER Subject Invention, which includes inventions of any Participants, within six months after conception or first actual reduction to practice, whichever occurs first. If USER wishes to elect title to the Subject Invention, a notice of election to the Subject Invention should be submitted with the report or within one year of such date of reporting of the Subject Invention.

D. Facilities License

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 USER, which at any time through completion of this Agreement are owned or controlled by USER and are incorporated in the User Facility as a result of this Agreement to such an extent that the User Facility is not restored to the condition existing prior to the Agreement (1) to practice or to have practiced by or for the Government at the User Facility, and (2) to transfer such licenses with the transfer of that User 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.

ARTICLE IX. RIGHTS IN TECHNICAL DATA***

A. Definitions

1. "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to Agreement administration.
 2. "USER Proprietary Directory" is a directory within a computer system that has been identified by the CONTRACTOR as being for the storage of files of USER containing Proprietary Data. Any and all Technical Data in subdirectories of any USER Proprietary Directory shall also be considered to be Proprietary Data.
 3. "Proprietary Data" means technical data which embody trade secrets, developed at private expense, such as software, design procedures or techniques, chemical composition of materials, or manufacturing methods, processes or treatments, including minor modifications thereof, provided that such data:
 - a. are not generally known or available from other sources without obligation concerning their confidentiality;
 - b. have not been made available by the owner to others without obligation concerning their confidentiality;
 - c. are not already available to the Government without obligation concerning their confidentiality; and
 - d. are either marked as "Proprietary Data", "Confidential" or stored in a USER Proprietary Directory.
 4. "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.
- B.** USER agrees to furnish to DOE or CONTRACTOR those data, if any, which are (1) essential to the performance of work by DOE or CONTRACTOR personnel or (2) necessary

for the health and safety of such personnel in the performance of the work. Any data furnished to DOE or CONTRACTOR shall be deemed to have been delivered with Unlimited Rights unless marked as "Proprietary Data" or "Confidential" of USER.

- C. Subject to provisions in Paragraph D of this Article, USER agrees that it shall have the sole responsibility for identifying and marking all documents containing Proprietary Data which are furnished by USER or produced under this Agreement. USER further agrees to mark each such document by or before termination of the Agreement by placing on the cover page thereof a legend identifying the document as Proprietary Data or Confidential of USER and identifying each page and portion thereof to which the marking applies. The Government and CONTRACTOR shall not disclose properly marked Proprietary Data or Confidential of USER outside the Government and CONTRACTOR and CONTRACTOR's representatives. The Government and CONTRACTOR reserve the right to challenge the proprietary nature of any markings on data.
- D. CONTRACTOR shall identify directories within a computer file system as being USER Proprietary Directories. Any and all Technical Data in subdirectories of any USER Proprietary Directory shall also be considered to be Proprietary Data. USER agrees that it shall have the sole responsibility for storing all proprietary electronic files (such as data, documentation, source code, object code, executable code, and libraries) within such USER Proprietary Directories. The Government and CONTRACTOR shall not disclose the contents – or any portion thereof – of these USER Proprietary Directories outside the Government and CONTRACTOR. The Government and CONTRACTOR reserve the right to challenge the proprietary nature of any file in a USER Proprietary Directory.
- E. USER is solely responsible for the removal of all of its Proprietary Data, in accordance with storage policies, if any, of the particular User Facility. The Government shall have Unlimited Rights in any Technical Data (including Proprietary Data) which are not removed from the facility within 30 days after completion or termination of the applicable Appendix A executed under this Agreement. The Government shall have Unlimited Rights in any Technical Data (including Proprietary Data) which are incorporated into the User Facility under the Agreement to such extent that the User Facility or equipment is not restored to the condition existing prior to such incorporation.
- F. Upon completion or termination of the project, USER agrees to deliver to DOE and CONTRACTOR a non-proprietary, publicly releasable report describing the work performed under the Agreement.

ARTICLE X. LABORATORY SITE ACCESS, SAFETY AND HEALTH ***

As a precondition to using CONTRACTOR User Facilities, Participants must complete all CONTRACTOR Site Access documents and requirements. USER and Participants shall take all reasonable precautions in activities carried out under this Agreement to protect the safety and health of others and to protect the environment. Participants must comply with all applicable safety, health, access to information, security and environmental regulations and the requirements of the Department and CONTRACTOR, including the specific requirements of the Proprietary User Facility covered by this Agreement. In the event that USER or Participant fails to comply with said regulations and requirements, CONTRACTOR may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of USER's or Participant's activities at the Designated Proprietary User Facility.

ARTICLE XI. PERSONNEL RELATIONSHIPS ***

Participants will remain employees or representatives of USER at all times during their participation in the work under this Agreement, and shall not be considered employees of CONTRACTOR or DOE for any purpose. Participants shall be subject to the administrative and technical supervision and control of CONTRACTOR during and in connection with the Participants' activities under this Agreement. Likewise, CONTRACTOR will retain its employees assigned to this work on its payroll.

ARTICLE XII: EXPORT CONTROLS***

USER acknowledges that the export of goods or Technical Data 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 XIII. THIRD-PARTY CONTRACTS

Contracts between USER and third parties for work on CONTRACTOR premises including, but not limited to, construction, installation, maintenance, and repair, will be subject to prior approval by the Department and CONTRACTOR. The Department and CONTRACTOR may require the insertion of specific terms and conditions into such contracts.

ARTICLE XIV: DISPUTES ***

The parties will attempt to jointly resolve all disputes arising under this agreement. If the parties are unable to jointly resolve a dispute within a reasonable period of time, either party may contact the laboratory's Technology Transfer Ombudsman (TTO) to provide assistance. The TTO may work directly to resolve the dispute or, upon mutual agreement of the parties, contact a third party neutral mediator to assist the parties in coming to a resolution. The costs of the mediator's services will be shared equally by the parties. In the event that an agreement is not reached with the aid of the ombudsman or mediator, the parties may agree to have the dispute addressed by neutral evaluation. The decision rendered by the neutral evaluator shall be nonbinding on the parties, and any costs incurred there from shall be divided equally between the parties. Upon mutual agreement, the parties may request a final decision by the DOE Contracting Officer. Absent resolution, either party may seek relief in a court of competent jurisdiction.

ARTICLE XV. CONFLICT OF TERMS***

In the event of any conflict between the terms of this document and any other document issued by either Party, the terms of this document shall prevail.

ARTICLE XVI. TERMINATION***

Either Party 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, provided that CONTRACTOR shall recover payment for the costs incurred by CONTRACTOR on behalf of USER prior to termination and for termination costs.

AUTHORIZED SIGNATURES:

By signing this Agreement, the signatories attest that they are legally authorized to commit their respective institutions to this Agreement.

Proposed on behalf of USER	Accepted on behalf of CONTRACTOR
Signature:	Signature:
Name (print):	Name:
Title (print):	Title:
Date:	Date: