

INDUSTRIAL PARTNERSHIP PROGRAM USER AGREEMENT

Non-collaborative

No. IP-15-_____

By and between

UT-Battelle, LLC

(hereinafter called "**Contractor**" or "**Facility Operator**"), managing the Oak Ridge National Laboratory under Prime 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"), hereinafter also referred to individually as a "Party" or collectively as "Parties", hereby agree:

SPECIAL NOTICE CONCERNING PROTECTION OF INFORMATION AND INFORMATION SYSTEMS

The Oak Ridge Leadership Computing Facility (hereinafter the "User Facility" or "OLCF") has implemented controls for protecting non-sensitive unclassified (fundamental research) information as well as unclassified controlled information based on the NIST 800-53 "Moderate Baselines and Compensatory Controls". Risk is currently mitigated using available enterprise infrastructure and network-based tools to provide perimeter protection and vulnerability resolution. System and application-level security controls are implemented according to industry and federal best practices. All non-sensitive non-temporary user data resides on centralized file and archival storage systems that are regularly backed up. This data is protected and segmented from other users using standard access controls.

It is the sole responsibility of the User to identify the type of information that is to be processed (e.g., sensitive or non-sensitive) and to notify the User Facility of any specific data protection requirements beyond the currently implemented protections. The User Facility cannot guarantee that risks to preserving the Confidentiality, Integrity, and Availability (CIA) of information stored on its systems are zero. Information sensitivity concerns apply to the purpose and intent of the research, the loading and execution of application software, input data for the application software, output data generated by the application software, and any data resulting from analysis of output data. If, for example, the application software has an export control classification number (ECCN), prospective users should acknowledge this fact along with giving the ECCN.

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. Additional future Appendices A referencing this Agreement may be created for identifying additional facilities and purposes during the term of this Agreement. Such additional Appendices will be considered to be part of this Agreement upon acceptance by the Parties.

ARTICLE II — COSTS

Each Party will bear its own costs and expenses associated with this Agreement. No money will be transferred to or from either Party as consideration, in whole or in part, for this Agreement, except for reimbursement for support services that are provided above and beyond those normally provided by the facility upon request by User and at the discretion of the Contractor. Services may include such activities as sample preparation and facility operation outside of normal working hours, but shall not include conduct of research. Costs associated with User support shall be agreed upon in advance and set forth in a project-specific Appendix A. Contractor will invoice User for these costs, and user shall pay each invoice according to the instructions therein.

ARTICLE III — ADMISSION; PERSONNEL RELATIONSHIPS

- A. Users 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, environmental protection, access to information, 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.
- B. For activities that involve Contractor computers, data storage systems, or communication networks, User must comply with Contractor Computer Use Policy which is available at http://www.nccs.gov/wp-content/accounts/nccs_computing_policy.pdf.

THE USE OF CONTRACTOR RESOURCES TO STORE, MANIPULATE, OR REMOTELY ACCESS ANY NATIONAL SECURITY INFORMATION IS EXPRESSLY PROHIBITED. This includes, but is not limited to, classified information, unclassified controlled nuclear information (UCNI), naval nuclear propulsion information (NNPI), the design or development of nuclear, radiological, biological, or chemical weapons or of any weapons of mass destruction. DOE or Contractor shall have the unrestricted right to inspect all codes and data to ensure compliance with this clause.

ARTICLE IV — 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 V — MATERIALS AND COMPUTER CODE

It is recognized that any material to be supplied by the User may be damaged, consumed, or lost.

It is recognized that any computer code (object and source) must be removed by the User within 30 days after completion or termination of this Agreement. The Government has unlimited rights in any computer code remaining at the User Facility.

ARTICLE VI — PATENT AND TECHNICAL DATA PROVISIONS (FEDERALLY FUNDED)

Users operating under a Federal Funding Agreement (e.g., grant or contract) will follow the patent and technical data terms and conditions of the Federal Funding Agreement to the extent that such terms and conditions differ from the terms and conditions of ARTICLE VII below.

ARTICLE VII --- PATENT AND TECHNICAL DATA PROVISIONS (PRIVATELY FUNDED)

A. Patent Rights

1. Definitions

- a. **"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.
- b. **"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.
- c. **"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 the Contractor** - If a Contractor employee makes any inventions or discoveries or generates other Intellectual Property under this Agreement, Contractor ownership will be governed by the provisions of Contractor's Prime Contract.
4. **Rights of Government** — Terms and Conditions of Waived Rights The User shall promptly provide the Government with a copy of any patents issued on Subject Inventions.
5. **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.
6. **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 7.
7. **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 permitted 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 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. **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.

D. **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. **Deliverables** - The Contractor and User will negotiate in good faith and agree on a meaningful list of research results and data generated during the work performed under this Agreement that will be released to the public by User. There will be no other obligation to publish any other data produced by the User.
 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 and the Facility Operator shall not disclose properly marked Proprietary Data of the User outside the Government, the Facility Operator, and the Facility Operator's representatives. The Government and the Facility Operator reserve 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 within 30 days from completion or 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.

E. 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 or any failure of the Contractor to protect information and/or information systems from unauthorized access.
- 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 shall indemnify 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

- A. 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.
- B. The User also acknowledges that it is responsible for its own export control administration.

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.

ARTICLE XIII- AUTHORIZED SIGNATURES:

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

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in their respective names by their duly authorized representatives.

Proposed on behalf of USER	Accepted on behalf of CONTRACTOR
Signature:	Signature:
Name (print):	Name: Cindy Kendrick
Title (print):	Title: User Agreements Manager Sponsored Research Office
Date:	Date: