

Work for Others Agreement No. NFE-1X-0XXXX

between

UT-BATTELLE, LLC

Operating Under Prime Contract No. DE-AC05-00OR22725 for the
U.S. Department of Energy

and

SPONSOR

The obligations of the above-identified United States Department of Energy (hereinafter referred to as the "Department" or "DOE") facility contractor shall apply to any successor in interest to said facility contractor continuing the operation of the DOE facility involved in this Work for Others (WFO) Agreement (the "Agreement").

ARTICLE I. PARTIES TO THE AGREEMENT

The DOE facility contractor, **UT-BATTELLE, LLC** (hereinafter referred to as the "Facility Contractor" or a "Party") has been requested by **SPONSOR** (hereinafter referred to as the "Sponsor" or a "Party") to perform the work set forth in the Statement of Work (SOW), attached hereto as Appendix A. The Facility Contractor and Sponsor are hereinafter referred to jointly as the "Parties." It is understood by the Parties that, except for the intellectual property provisions of this Agreement, the Facility Contractor is obligated to comply with the terms and conditions of its management and operating (M&O) contract with the United States Government (hereinafter called the "Government") represented by DOE when providing goods, services, products, processes, materials, or information to the Sponsor under this Agreement.

ARTICLE II. TERM OF THE AGREEMENT

The Facility Contractor estimated period of performance for completion of the SOW is ??? (XX) months from the effective date of this Agreement, which shall be latter date of: (1) the date on which it is signed by the last of the Parties; or (2) the date on which it is approved by DOE.

ARTICLE III. COSTS

- A. The Facility Contractor estimated cost for the work to be performed under this Agreement is \$XX.
- B. The Facility Contractor has no obligation to continue or complete performance of the work at a cost in excess of its estimated cost, including any subsequent amendment(s).
- C. The Facility Contractor agrees to provide at least thirty (30) days' notice to the Sponsor if the actual cost to complete performance will exceed its estimated cost.

ARTICLE IV. FUNDING AND PAYMENT

The Sponsor shall provide sufficient funds in advance to reimburse the Facility Contractor for costs to be incurred in performance of the work described in this Agreement, and the Facility Contractor shall have no obligation to perform in the absence of adequate advance funds. If the estimated period of performance exceeds sixty (60) days or the estimated cost exceeds \$25,000, the Sponsor may, with the Facility Contractor's approval, advance funds incrementally. In such a case, the Facility Contractor will initially invoice the Sponsor in an amount sufficient to permit the work to proceed for ninety (90) days

and thereafter invoice the Sponsor monthly so as to maintain approximately a sixty (60) -day period that is funded in advance. Payment shall be made directly to the Facility Contractor. Upon termination or completion, any excess funds shall be refunded by the Facility Contractor to the Sponsor.

ARTICLE V. SOURCE OF FUNDS

The Sponsor hereby warrants and represents that, if the funding it brings to this Agreement has been secured through other agreements, such other agreements do not have any terms and conditions (including intellectual property) that conflict with the terms of this Agreement. If this Agreement conflicts with existing International Agreements, the International Agreement terms and conditions will take precedence.

ARTICLE VI. PROPERTY

Upon termination of this Agreement, property or equipment produced or acquired in conducting the work under this Agreement shall be owned by the Government. No federal funds will be used to purchase property or equipment for this Agreement. Property or equipment produced or acquired as part of this Agreement will be accounted for and maintained during the term of the Agreement in the same manner as Department property or equipment.

ARTICLE VII. PUBLICATION MATTERS

The publishing Party shall provide the other Party a thirty (30) -day period in which to review and comment on proposed publications that either disclose technical developments and/or research findings generated in the course of this Agreement, or identify Proprietary Information (as defined in Paragraph A.2 of Article XV). The publishing Party shall not publish or otherwise disclose Proprietary Information identified by the other Party, except as provided by law.

ARTICLE VIII. LEGAL NOTICE

The Parties agree that the following Legal Disclaimer Notice shall be affixed to each report furnished to the Sponsor under this Agreement and to any report resulting from this Agreement which may be distributed by the Sponsor:

Disclaimer Notice

This report was prepared by UT-Battelle, LLC (UT-Battelle) on behalf of the U.S. Department of Energy (DOE), as an account of work sponsored by Sponsor. Neither UT-Battelle, DOE, the U.S. Government, nor any person acting on their behalf: (1) makes any warranty or representation, express or implied, with respect to the information contained in this report; or (2) assumes any liabilities with respect to the use of, or damages resulting from the use of any information contained in the report.

ARTICLE IX. DISCLAIMER

THE GOVERNMENT AND THE FACILITY CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS WORK FOR OTHERS 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. NEITHER

THE GOVERNMENT NOR THE FACILITY CONTRACTOR SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS WORK FOR OTHERS AGREEMENT.

ARTICLE X. GENERAL INDEMNITY

The Sponsor agrees to indemnify and hold harmless the Government, the Department, the Facility Contractor, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the Sponsor, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of this Agreement by the Government, the Department, the Facility Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the Sponsor, and not directly resulting from the fault or negligence of the Government, the Department, the Facility Contractor, or persons acting on their behalf.

ARTICLE XI. PRODUCT LIABILITY INDEMNITY

Except for any liability resulting from any negligent acts or omissions of the Government or the Facility Contractor, the Sponsor agrees to indemnify the Government and the Facility Contractor for all damages, costs, and expenses, including attorney's 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 Sponsor, its assignees, or licensees, which was derived from the work performed under this Agreement. In respect to this Article, neither the Government nor the Facility Contractor shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Facility Contractor rights. The indemnity set forth in this paragraph shall apply only if the Sponsor shall have been informed as soon and as completely as practical by the Facility Contractor and/or the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Facility Contractor and/or Government shall have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible shall be made without the Sponsor's consent, unless required by final decree of a court of competent jurisdiction.

ARTICLE XII. INTELLECTUAL PROPERTY INDEMNITY - LIMITED

The Sponsor shall indemnify the Government and the Facility Contractor and their officers, agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed by the Sponsor to be performed under this Agreement to the extent such acts are not already performed at the facility. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Sponsor unless required by a court of competent jurisdiction.

ARTICLE XIII. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The Sponsor shall report to the Department and the Facility Contractor, promptly and in reasonable written detail, each claim of patent or copyright infringement based on the performance of this Agreement of which the Sponsor has knowledge. The Sponsor shall furnish to the Department and the Facility Contractor, when requested by the Department or the Facility Contractor, all evidence and information in the possession of the Sponsor pertaining to such claim.

Article XIV. PATENT RIGHTS - USE OF FACILITIES (STRUCTURE OF THIS CLAUSE DETERMINED ON A CASE-BY-CASE BASIS)**Article XV. RIGHTS IN TECHNICAL DATA - USE OF FACILITY (STRUCTURE OF THIS CLAUSE DETERMINED ON A CASE-BY-CASE BASIS)****ARTICLE XVI. ASSIGNMENT**

Neither this Agreement nor any interest therein or claim thereunder shall be assigned or transferred by either Party, except as authorized in writing by the other Party to this Agreement, provided, the Facility Contractor may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Facility Contractor shall have no further responsibilities except for the confidentiality, use, and/or non-disclosure obligations of this Agreement.

ARTICLE XVII. SIMILAR OR IDENTICAL SERVICES

The Government and/or Facility Contractor shall have the right to perform similar or identical services in the SOW for other sponsors as long as the Sponsor's Proprietary Information is not utilized.

ARTICLE XVIII. EXPORT CONTROL

Each Party is responsible for its own compliance with laws and regulations governing export control.

ARTICLE XIX. TERMINATION

Performance of work under this Agreement may be terminated at any time by either Party, without liability, except as provided above, upon giving a thirty (30) -day written notice to the other Party. The Facility Contractor shall terminate this Agreement only when the Facility Contractor determines, after direction from DOE, that such termination is in the best interest of the Government, provided however, that the Facility Contractor shall have the right to terminate unilaterally if the Sponsor shall have failed to advance the funds required by Article IV. In the event of termination, the Sponsor shall be responsible for the Facility Contractor's costs (including closeout costs) through the effective date of termination, but in no event shall the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Article III. It is agreed that any obligations of the Parties regarding Proprietary Information or other intellectual property will remain in effect, despite early termination of the Agreement.

ARTICLE XX. RESOLUTION OF DISPUTES

- A. The Parties agree to make good-faith efforts to settle any dispute or claim arising under or relating to this Agreement through discussions and negotiation between executives and/or officials who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. If such efforts fail to result in a mutually-agreeable resolution, the Parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Costs shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each Party shall bear its discretionary costs. In the event that ADR fails or is not used, the Parties agree that the appropriate forum for resolution shall be as follows:
1. Subject to Paragraph A.2 of this article, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division;
 2. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in Anderson, Knox or Roane County, Tennessee in the Circuit or Chancery Court, as appropriate.

- B. The Parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation or other effort at resolution shall be determined in accordance with federal statutory and common law regarding Government contracts; in the absence of applicable federal law, the laws of the State of Tennessee shall apply.

DRAFT

In witness whereof, the Parties have executed this Agreement.

FOR Facility Contractor:

By: _____

Name: _____ Mark Reeves

Title: _____ Associate Director, Technology Transfer

Date: _____

FOR Sponsor:

By: _____

Name: _____ Sponsor Signatory

Title: _____ Sponsor Signatory Title

Date: _____

APPROVED BY THE DEPARTMENT OF ENERGY:

By: _____

Name: _____ Michele G. Branton

Title: _____ Deputy Manager, ORNL Site Office

Date: _____

APPENDIX A
STATEMENT OF WORK

Title of Project

Date

Prepared by

Proposer (Principal Investigator)
ORNL Organization
Oak Ridge National Laboratory
Oak Ridge, Tennessee 37831

for

Sponsor

Sponsor Address 1
Sponsor Address 2
Sponsor Address 3

Department of Energy (DOE)
Proposal Number # NFE-1X-0XXXX

Prepared Under DOE Contract # DE-AC05-00OR22725

Between

DOE

and

UT-Battelle, LLC

Title of Project

Department of Energy (DOE) Proposal Number # NFE-1X-0XXXX

1.0 BACKGROUND

2.0 PURPOSE/OBJECTIVES

3.0 SCOPE OF WORK

Task 1

Task 2

Task 3

Task 4

Task 5, etc.

Task Schedule

4.0 DELIVERABLES

5.0 BUDGET

Cost Category	Project Year 1	Project Year 2	Project Year 3	Project Year 4	Project Year 5	Total
Labor	\$	\$	\$	\$	\$	\$
Materials & Supplies	\$	\$	\$	\$	\$	\$
Travel	\$	\$	\$	\$	\$	\$
Subcontracting	\$	\$	\$	\$	\$	\$
Overhead	\$	\$	\$	\$	\$	\$
Subtotal	\$	\$	\$	\$	\$	\$
FAC*	\$	\$	\$	\$	\$	\$
Total	\$	\$	\$	\$	\$	\$

* FAC is the Federal Administrative Charge that is mandated by Section 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public Law 105-261).

APPENDIX B

to

NFE-1X-0XXXX

BACKGROUND INTELLECTUAL PROPERTY

The Facility Contractor has identified the following Background Intellectual Property:

Background Intellectual Property Item #1

Background Intellectual Property Item #2

Background Intellectual Property Item #3

Etc.

-or-

None.

DRAFT