Non-Proprietary User Agreement

No. **NN-2X-_____**

Between

UT-Battelle, LLC
"CONTRACTOR"
Operator of Oak Ridge National Laboratory (hereinafter “Laboratory” or “ORNL”) under Prime Contract No. DE-AC05-00OR22725 with the United States Government (hereinafter “U.S. Government” or “Government”), as represented by the United States Department of Energy (hereinafter “DOE”),

AND

Name of User Institution
"USER"

(Collectively, “the Parties”)

The obligations of the above-identified DOE CONTRACTOR may be transferred to and shall apply to any successor in interest to said CONTRACTOR continuing the operation of the Laboratory.

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR will make available to employees, consultants and/or representatives of USER (hereinafter called “Participants”) certain Laboratory Non-Proprietary User Facilities (“User Facilities”), which may include equipment, services, information and other material, with or without Laboratory scientist collaboration, for purposes as described in individual proposals approved by said User Facilities.

CONTRACTOR will make available to Participants certain Laboratory User Facilities for non-proprietary use, which may include equipment, services, information, and other material, with or without Laboratory scientist collaboration, for purposes as described in the USER’s proposal accepted and conducted at the designated User Facility. Additional future experiments referencing this Agreement may be submitted by USER for identified User Facilities and purposes during the term of this Agreement (see Article II). Such additional proposals will be considered part of this Agreement upon acceptance by CONTRACTOR. Each accepted and approved proposal shall set forth the Technical Scope of Work of a specific project, including deliverables, to be performed pursuant to this Agreement. The scope of work shall not be considered proprietary information and shall be publicly releasable.

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 User 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 description of the experimental work, since such information is essential to the CONTRACTOR to operate the Facility. The scope of work shall not be considered proprietary information and shall be publicly releasable.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of five years from the effective date. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties. Unless terminated in

accordance with terms herein, this Agreement shall automatically renew on a year-to-year basis, limited to five additional one-year renewals, after the initial five-year term. If the Agreement needs to be extended past the extended ten-year term, the Parties shall review and execute a new Agreement.

ARTICLE III: COST

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 or routinely provided by the User Facility upon request by USER and at the discretion of CONTRACTOR. Support services above and beyond those normally or routinely provided by the Facility may include, for example, sample preparation and Facility operation outside of normal working hours, but shall not include conduct of research. Costs associated with said USER support shall be agreed upon in advance and set forth in an executable, project-specific appendix to this Agreement. CONTRACTOR will invoice USER for these costs, and USER shall pay each invoice according to the instructions therein.

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, hours of work, and conduct. As a condition of User Facility access, Participants shall execute any and all documents required by CONTRACTOR acknowledging and agreeing to comply with such applicable rules of CONTRACTOR.

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 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 completion, termination, or expiration of the work conducted under each approved proposal or will be disposed of as directed by USER at USER's expense. Any equipment that becomes integrated into the Facility shall be the property of the Government. USER acknowledges that any material supplied by USER may be damaged, consumed or lost. Unless otherwise agreed in writing, 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 or CONTRACTOR (at CONTRACTOR'S option) at USER's expense.

USER will return facilities and equipment utilized in their original condition except for normal wear and tear.

CONTRACTOR shall have no responsibility for USER's property in CONTRACTOR's possession 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 law and the law of the USER's country or US state, 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 law and the law of the USER's country or US state, 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, to the extent such liability, claims, or damages is caused by or contributed to by the negligence or intentional misconduct of USER or its Participants during the performance of the work under this Agreement.

D. Patent and Copyright Indemnity—Limited - To the extent permitted by US federal law and the law of the USER's country or US state, 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 this Agreement to the extent such acts are not normally performed at the User 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 infringement, and such indemnity shall not apply to a claimed 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 U.S. 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 U.S. 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 U.S. Government when requested by the U.S. 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 U.S. Government except where USER has agreed to indemnify the U.S. Government.

ARTICLE VIII: PATENT RIGHTS

A. Definitions

1. “Subject Invention” means any invention or discovery conceived or first actually reduced to practice in the course of or under this Agreement.
2. "USER Invention" means any Subject Invention of USER.
3. “CONTRACTOR Invention” means any Subject Invention of CONTRACTOR.
4. "Patent Counsel" means the DOE Counsel for Intellectual Property assisting the DOE contracting activity.

B. Subject Inventions

CONTRACTOR and USER agree to disclose their Subject Inventions within six months after conception or first actual reduction to practice, whichever occurs first, through the iEdison reporting system, unless otherwise directed by Patent Counsel, which include any inventions of their Participants, to each other, concurrent with reporting such Subject Inventions to DOE. The Parties agree that they will protect Subject Inventions from public disclosure for a reasonable period of time so that patent applications can be filed. CONTRACTOR employees are bound by the confidentiality requirements of their employer and the CONTRACTOR’s Prime Contract with DOE with respect to intellectual property disclosures.

C. CONTRACTOR’s Rights

Except as provided below in the case of joint inventions, CONTRACTOR Inventions will be governed by the provisions of CONTRACTOR’S Prime Contract for operation of the Laboratory.

D. USER's Rights

Subject to the provisions herein, USER may elect title through the iEdison reporting system, unless otherwise directed by Patent Counsel, to any USER Invention and in any resulting patent secured by USER within one year of reporting the Subject Invention to DOE. The USER shall file a US patent application within a reasonable period of time. Where appropriate, the filing of patent applications by USER is subject to DOE security regulations and requirements.

E. Joint Inventions

For Subject Inventions conceived or first actually reduced to practice under this Agreement that are joint Subject Inventions made by CONTRACTOR and USER, each Party shall have the option to elect and retain title to its undivided rights in such joint Subject Inventions.

F. Rights of Government

1. USER agrees to timely assign to the U.S. Government, if requested, the entire right, title, and interest in any country to each USER Invention where USER:

a. Does not elect to retain such rights; or

b. Fails to timely have a patent application filed in that country on the USER Invention or decides not to continue prosecution or not to pay the maintenance fees covering the Invention; or

c. At any time, no longer desires to retain title.

2. USER shall provide the U.S. Government through the iEdison reporting system, unless otherwise directed by Patent Counsel, a copy of any application filed by USER promptly after such application is filed, including its serial number and filing date.

3. USER hereby grants to the U.S. Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the USER Invention made under said project throughout the world.

4. USER acknowledges that the DOE has certain March-in Rights to any USER Inventions elected by the USER in accordance with 48 C.F.R. 27.304-1(g) and that the USER is subject to the requirements with respect to preference for U.S. industry pursuant to 35 U.S.C. § 204 to any USER Inventions elected by the USER.

5. USER agrees to include, within the specification of any U.S. patent applications and any patent issuing thereon covering a USER Invention, the following statement:

> ***"The United States Government has rights in this invention pursuant to User Agreement (specify number) between (USER name) and UT-Battelle, LLC, which manages and operates Oak Ridge National Laboratory for the US Department of Energy."***

6. USER agrees to submit through the iEdison reporting system, unless otherwise directed by Patent Counsel, periodic reports to DOE no more frequently than annually on the utilization of USER Inventions or on efforts to obtain such utilization that are being made by USER or its licensees or assignees.

7. Facilities License: USER agrees to and does hereby grant to the Government a nonexclusive, nontransferable, irrevocable, paid-up license in and to any inventions or discoveries, regardless of when conceived or actually reduced to practice or acquired by USER, which are incorporated in the User 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 (1) to practice or to have practiced by or for the Government at the Facility, and (2) to transfer

such licenses 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.

G. Invention Report and Election

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

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, costs 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, outside of this Agreement, 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 CONTRACTOR or the Government without obligation concerning their confidentiality; and

d. are either marked as "Proprietary Data" or stored in any USER Proprietary Directory.

4. "Unlimited Rights" means right 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. Allocation of Rights

1. The Government shall have Unlimited Rights in Technical Data first produced or specifically used in the performance of this Agreement except as otherwise provided in this Agreement. CONTRACTOR agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from USER, CONTRACTOR shall treat such data in accordance with any restrictive legend contained thereon. DOE and the CONTRACTOR reserve the right to challenge the proprietary nature of any markings.

2. USER shall have the right to use, subject to patent, security or other provisions of this Agreement, Technical Data first produced in the performance of this Agreement provided the data delivery requirements of this Agreement have been met as of the date of the use of such data. USER agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from

DOE or a DOE contractor or subcontractor, USER shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the DOE Contracting Officer for the CONTRACTOR's Prime Contract.

C. Deliverables

1. USER agrees to furnish to DOE or CONTRACTOR those data, if any, which are (a) specified to be delivered in Appendices and/or approved proposals, (b) essential to the performance of work by CONTRACTOR personnel or (c) 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" of USER. DOE and the CONTRACTOR reserve the right to challenge the proprietary nature of any markings.

2. In accordance with Article I, USER shall deliver to CONTRACTOR for each project a publicly releasable, initial abstract or description of the work to be performed.

3. Upon completion or termination of each project, USER agrees to deliver to DOE's Office of Science and Technology Information and CONTRACTOR a publicly releasable report describing the work performed.

D. Legal Notice

The following legal notice shall be affixed to each report or publication resulting from this Agreement which may be distributed by 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., acting under Contract No. DE-AC05-00OR22725. Neither UT-Battelle, DOE, the U.S. Government, nor any person acting on their behalf: (a) make any warranty or representation, express or implied, with respect to the information contained in this document; or (b) assume any liabilities with respect to the use of, or damages resulting from the use of any information contained in the document.

E. Copyrighted Material

1. USER agrees to, and does hereby grant to the Government, and to its officers, agents, servants and employees acting within the scope of their duties:

a. A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others so to do, all copyrightable material first produced or composed in the performance of this Agreement by USER, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and

b. A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by USER in the performance of this Agreement but which are incorporated in the material furnished or delivered under this Agreement (excluding any software temporarily uploaded or stored on User Facility resources to which CONTRACTOR does not need access for performance of work by CONTRACTOR personnel), provided that such license shall be only to the extent USER now has, or prior to completion or final settlement of this Agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

2. USER agrees that it will not knowingly include any copyrightable material furnished or delivered under this Agreement without a license as provided for in subparagraph 1(b)

hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted materials.

F. Disclosure of Proprietary Data

1. 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 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 and CONTRACTOR's representatives. The Government and CONTRACTOR reserve the right to challenge the proprietary nature of any file in a USER Proprietary Directory.
2. 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. In the absence of such policies, the USER must remove its related Technical Data (including Proprietary Data) from all areas to which it has access within thirty (30) days after completion or termination of projects authorized under this Agreement. The Government and CONTRACTOR will treat any remaining appropriately identified Proprietary Data, including Proprietary code, in accordance with Prime Contract No. DE-AC05-00OR22725 and paragraph 3 below. The Government shall have Unlimited Rights in any Technical Data (including Proprietary Data) which are incorporated into the User Facility under this Agreement to such extent that the User Facility or equipment is not restored to the condition existing prior to such incorporation.
3. All remaining appropriately identified Proprietary Data, including Proprietary code, shall be protected from disclosure for a period of three years from the date of disclosure to CONTRACTOR. CONTRACTOR may provide employees of DOE access to proprietary data. DOE employees are required by 18 USC 1905 to protect proprietary data.

ARTICLE X. LABORATORY SITE ACCESS, SAFETY AND HEALTH

As a precondition to accessing User Facilities, Participants must complete all CONTRACTOR Site Access documents and requirements. USER and Participant 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 User Facilities 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 activities at the User Facility.

ARTICLE XI. PERSONNEL RELATIONSHIPS

Participants will remain employees or representatives of the 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. Consistent with Article IV, Participants shall be subject to the administrative and technical supervision and control of CONTRACTOR during and in connection with the Participant's activities under this Agreement.

ARTICLE XII: EXPORT CONTROLS

The Parties acknowledge 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: PUBLICATIONS

A. For collaborative work between the Parties, USER and CONTRACTOR will provide each other copies of proposed written and oral publications of information generated pursuant to this Agreement for review and comment 30 days prior to submission for publication. Proposed oral publications shall be submitted to the recipient Party in the form of a written presentation synopsis or abstract.

B. USER will not use the name of CONTRACTOR or the United States Government or their employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the Government and CONTRACTOR.

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 CONTRACTOR'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

This Agreement constitutes the primary document which governs the work conducted under approved proposals at ORNL’s User Facilities. In the event of any conflict between the terms of this Agreement and any other document issued by either Party, the terms of this Agreement 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. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

AUTHORIZED SIGNATURES:

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

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

To be completed by USER:

Organizational Classification (select one)

☐U.S. Small For-Profit Business (per SBA definition)
☐Other U.S. For-Profit Business
☐U.S. Non-profit Organization
☐U.S. University or Educational Institution
☐U.S. Contractor-Operated National Laboratory
☐U.S. Federal Agency
☐Non-U.S. For-Profit Business
☐Non-U.S. Non-Profit Organization
☐Non-U.S. University or Educational Institution
☐Non-U.S. Government Agency or Entity
☐Other (Please specify): _____