

Strategic Partnership Projects Agreement No. NFE-2X-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 DOE site/facility management contractor shall apply to any successor in interest to said contractor continuing the operation of the DOE facility involved in this Strategic Partnership Projects (SPP) Agreement (the “Agreement”).

ARTICLE I. PARTIES TO THE AGREEMENT UT-Battelle, LLC, hereinafter referred to as the “Facility Contractor,” has been requested by Sponsor (under its Funding Agreement No. XXXXX with the federal agency), hereinafter referred to as the “Sponsor,” collectively referred to as the “Parties,” to use best efforts to perform the work set forth in the Statement of Work (SOW), attached hereto as Appendix A. It is understood by the Parties that the Facility Contractor is obligated to comply with the terms and conditions of its Facility Prime Contract with the United States Government (hereinafter called the “Government”) represented by the United States Department of Energy (herein called the “Department” or “DOE”) when providing goods, services, products, materials, or information to the Sponsor under this Agreement.

ARTICLE II. TERM OF THE AGREEMENT The Facility Contractor intends to complete performance of the SOW by Month Day, Year, on which date the Agreement will terminate, unless amended in accordance with Article XX or terminated prior to this date in accordance with Article XXI. The effective date of this Agreement shall be the later of (1) the date on which it is signed by the last of the Parties, (2) the date on which it is approved by DOE, or (3) date of Facility Contractor’s receipt of Sponsor’s advance funds (if required).

ARTICLE III. COSTS

1. The Facility Contractor estimated cost for the work to be performed under this Agreement is \$XX.
2. 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.
3. The Facility Contractor agrees to provide at least 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. The Sponsor shall provide to the Facility Contractor, prior to any work being performed, an advance payment sufficient to cover anticipated work that will be performed for the first billing cycle. In addition, the Sponsor shall provide 60 days of additional funding to ensure that funds remain available for work during subsequent billing cycles. The Facility Contractor will provide an invoice to the Sponsor at the end of each month in which work is performed hereunder for all services and expenses in accordance with DOE’s accounting policies. Payment shall be made directly to the Facility Contractor who will then notify DOE as appropriate. 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 represents that, if the funding it brings to this Agreement has been secured through other agreements, those other agreements do not have any terms and conditions (including intellectual property terms and conditions) that conflict with the terms and conditions of this Agreement.

ARTICLE VI. TANGIBLE PERSONAL PROPERTY Upon termination of this Agreement, tangible personal property or equipment produced or acquired in conducting the work under this Agreement shall be owned by the Sponsor. Tangible personal 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 DOE property or equipment. Costs incurred for disposition of property shall be the responsibility of the Sponsor and included in costs allocated in Article III or paid separately by the Sponsor.

ARTICLE VII. PUBLICATION MATTERS The publishing Party shall provide the other Party a 30-day period in which to review and comment on proposed publications that (1) disclose any of the following generated in the course of the Agreement: technical developments, research findings, or (2) identify Proprietary Information (as defined in paragraph 1.B of Article XV). The publishing Party shall not publish or otherwise disclose Proprietary Information identified by the other Party, except as mandated by law. The Sponsor will not use the name of Facility 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 Facility Contractor.

ARTICLE VIII. LEGAL NOTICE The Parties agree that the following legal 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

This report may contain research results which are experimental in nature. Neither the United States Government, nor any agency thereof, nor UT-Battelle, LLC, nor any of their employees, makes any

warranty, express or implied, or assumes any legal responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference to any specific commercial product, process, or service by its trade name, trademark, manufacturer, or otherwise, does not constitute or imply an endorsement or recommendation by the United States Government or any agency thereof, or by UT-Battelle, LLC. The United States Government reserves for itself a royalty-free, worldwide, irrevocable, non-exclusive license for Governmental purposes to publish, disclose, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such data included herein. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof, or by UT-Battelle, LLC and shall not be used for advertising or product endorsement purposes.

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 STRATEGIC PARTNERSHIP PROJECTS 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 STRATEGIC PARTNERSHIP PROJECTS AGREEMENT.*

ARTICLE X. GENERAL INDEMNITY Except for any loss, liability, or claim resulting from any willful misconduct or negligent acts or omissions of the Government, the Facility Contractor, or persons acting on their behalf (“Indemnified Parties”), the Sponsor agrees to indemnify and hold harmless the Indemnified Parties against any loss, liability, or claim, including all damages, costs, and expenses, including attorney’s fees, directly relating to:

1. injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of the Agreement by the Indemnified Parties; or
2. use of the services performed, materials supplied, or information given under the Agreement by any person including the Sponsor or Facility Contractor.

ARTICLE XI. PRODUCT LIABILITY INDEMNITY Except for any loss, liability, or claim resulting from any willful misconduct or negligent acts or omissions of the Government, the Facility Contractor, or persons acting on their behalf (“Indemnified Parties”), the Sponsor agrees to hold harmless and indemnify the Indemnified Parties against any losses, liabilities, and claims, including 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. For purposes of 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. This Article shall apply only if the Sponsor was:

1. informed as soon and as completely as practical by the appropriate Indemnified Party of the allegation or claim;
2. afforded, to the maximum extent by applicable laws, rules, or regulations, an opportunity to participate in and control its defense; and
3. given 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 a court of competent jurisdiction.

ARTICLE XII. INTELLECTUAL PROPERTY INDEMNITY – LIMITED The Sponsor shall indemnify and hold harmless the Government and the Facility Contractor and persons acting on their behalf (“Indemnified Parties”) against any losses, liabilities, and claims, including all damages, costs, and expenses, including attorney’s fees, for infringement of any United States patent, copyright, trade secret, or other intellectual property right if 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 claim or allegation of 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 Each Party shall report to the other Party, promptly and in reasonable written detail, each claim or allegation of infringement of any patent, copyright, trade secret or any other intellectual property right based on the performance of this Agreement of which a Party has knowledge. In the event of any claim or suit against a Party based on such alleged infringement, the other Parties shall furnish to the Party, when requested by the Party, all evidence and information in the possession of the other Party pertaining to such suit or claim.

ARTICLE XIV. PATENT RIGHTS (CLASS WAIVER APPLIES; FULL GOVERNMENT LICENSE)

The specific language of this Article is determined, on a case-by-case basis, by the nature of the work being performed and by the DOE Class Patent Waiver for Nonfederal Strategic Partnership Projects Agreements [W(C)-2011-009].

ARTICLE XV. RIGHTS IN TECHNICAL DATA –USE OF FACILITY (PROPRIETARY DATA PROTECTION)

The specific language of this Article is determined, on a case-by-case basis, by the nature of the work being performed and by the DOE Class Patent Waiver for Nonfederal Strategic Partnership Projects Agreements [W(C)-2011-009].

ARTICLE XVI. ASSIGNMENT AND NOTIFICATION 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, however, 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. If the Sponsor intends to assign or transfer any interest in this Agreement to a third party or the Sponsor is merging or being acquired by a third party, the Sponsor shall notify the Facility Contractor with details of the pending action for a determination. The Facility Contractor shall reply in writing whether such transfer is acceptable or invoke the termination clause.

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. DISPUTES The Parties shall attempt to jointly resolve all disputes arising from this Agreement. In the event a dispute arises under this Agreement, the Sponsor is encouraged to contact Facility Contractor's Technology Partnerships Ombudsman in order to resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to jointly resolve a dispute within 60 days, the Parties agree to submit the dispute to a third-party mediation process that is mutually agreed upon by the Parties.

ARTICLE XX. ENTIRE AGREEMENT AND MODIFICATIONS

1. This Agreement with its appendices contains the entire agreement between the Parties with respect to the subject matter hereof, and all prior representations or agreements relating hereto have been merged into this document and are thus superseded in totality by this Agreement.
2. Any agreement to materially change any terms or conditions of this Agreement or the annexes shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.

ARTICLE XXI. TERMINATION This Agreement may be terminated by either Party following 30 days' written notice to the other Party. If Article IV provides for advance funding and/or periodic invoicing, this Agreement may also be terminated by the Facility Contractor in the event of failure by the Sponsor to provide the necessary advance funding or promptly pay the invoices rendered by the Facility Contractor. In the event of termination either by the Sponsor or by the Facility Contractor (e.g., for lack of advance funding or failure to promptly pay invoices), the Sponsor shall be responsible for the Facility Contractor's costs (including closeout costs), but in no event shall the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Article III, above. 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.

In witness whereof, the Parties have executed this Agreement.

For FACILITY CONTRACTOR

For SPONSOR

Signature
 Kourtney Hennard

Name
 Group Leader, Strategic Partnerships Agreements

Title

Date

Signature
 Name of Sponsor Signatory

Name
 Sponsor Signatory Title

Title

Date

Approved by the DEPARTMENT OF ENERGY

For SPONSOR (Optional Second Signature)

Signature
 Kenneth L. Kimbrough

Name
 Contracting Officer, DOE-ORNL Site Office

Title

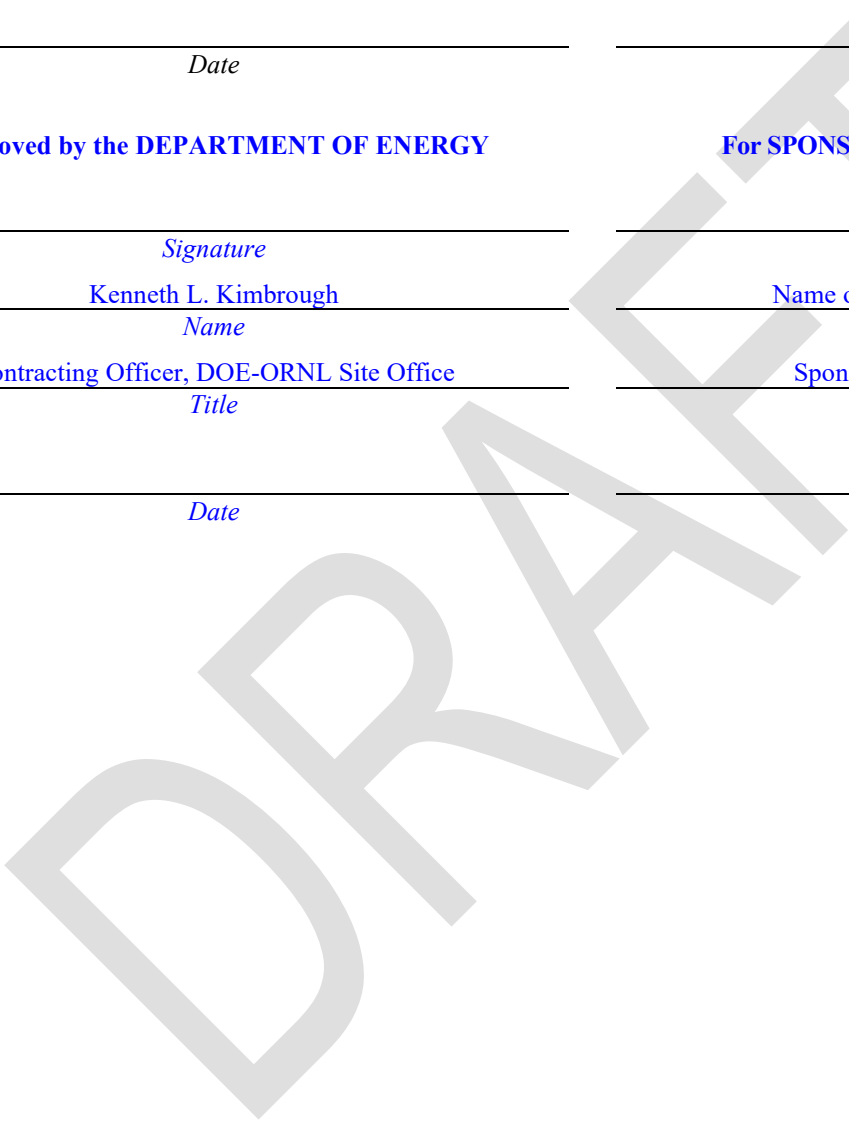
Date

Signature
 Name of Sponsor Second Signatory

Name
 Sponsor Second Signatory Title

Title

Date



**APPENDIX A
STATEMENT OF WORK**

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**APPENDIX B
BACKGROUND INTELLECTUAL PROPERTY (CLASS WAIVER APPLIES)**

“Intellectual Property” means Patents, Trademarks, Copyrights, Mask Works, and other forms of comparable property rights protected by Federal law and foreign counterparts, except trade secrets. “Background Intellectual Property” means the Facility Contractor’s Intellectual Property identified in this Appendix B, which was in existence prior to or was first produced outside of this Agreement, except that in the case of inventions in those identified items, the inventions must have been conceived outside of this Agreement and not first actually reduced to practice under this Agreement to qualify as Background Intellectual Property.

The Facility Contractor has identified the following Background Intellectual Property:

UT-Battelle Invention Disclosure No. XXXX, “**Title of Invention,**” and any associated patent applications and issued patents, including **specific patent application numbers or issued patent numbers.**

Etc.

[or]

None.

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