

ACT AGREEMENT NO. ACT-1X-0000X**between****UT-BATTELLE, LLC****and****CLIENT****both being hereinafter jointly referred to as the Parties**

UT-Battelle, LLC (UT-BATTELLE or a “Party”), a limited liability company organized and existing under the laws of the State of Tennessee, and the management and operating contractor for the Oak Ridge National Laboratory (ORNL) under its Prime Contract DE-AC05-00OR22725 with the U.S. Department of Energy (DOE), agrees to provide to **Client** (CLIENT or a “Party”) technical/research services substantially in accordance with the Statement of Work attached hereto as Appendix A (the Project) and incorporated herein by reference, and with Clause H-37, of its above-referenced Prime Contract, under the following terms and conditions:

1. TERM OF THE AGREEMENT

The Project period is estimated to be **???** (**XX**) months from the effective date of this agreement. The effective date of this agreement shall be the date on which it is signed by the last of the Parties.

2. PAYMENT

- A. UT-BATTELLE estimates that the cost to the CLIENT for performance of the Project will be **???** (**XXXXXX**) U.S. Dollars, payable as follows:
- i. An advance payment of **???** U.S. Dollars (**XXXXXX**) payable upon execution of this agreement; this advance payment must be received by UT-BATTELLE prior to commencement of any work on the Project.
 - ii. Payment of monthly invoices after commencement of the Project, said invoices representing costs incurred by UT-BATTELLE plus any applicable fees, until the advance payment amount equals the unexpended balance, at which time the advance payment amount will be credited to the Project for the cost plus fee associated with any remaining work.
- B. Upon project completion, any surplus will be refunded to the CLIENT.
- C. The amount stated above is an estimate of the costs and fee for the performance of this Project. UT-BATTELLE will use its best efforts to meet the Project objectives within the time and funds available. CLIENT will not be required to reimburse UT-BATTELLE for costs incurred nor fees in excess of the estimate set forth above, and UT-BATTELLE shall not be obligated to continue performance under this agreement or otherwise to incur costs and fee in excess of the estimate stated above, unless the estimate has been increased by written amendment to this agreement.
- D. Invoiced amounts not received by UT-BATTELLE within 30 days of receipt of invoices by the CLIENT shall accrue interest at a rate of one and one-half percent (1 1/2%) per month and UT-BATTELLE may, at its option, suspend or terminate work on the Project.

- E. Payments may be made by check or by electronic funds transfer; instructions and addresses for each mode of payment will be included on invoices provided to CLIENT by UT-BATTELLE.

3. NOTICES

The addresses, telephone numbers, and email addresses for the Parties and the Patent Counsel are shown below. This contact information shall be used for communications between the Parties regarding the terms and conditions of this agreement, or between the Sponsor and the Patent Counsel regarding election of patent rights under Article XIV. All communications regarding this Agreement shall include the number of the Agreement. **Sponsor's payments of invoices, and any Sponsor communications regarding invoicing, payments, or other financial matters shall be directed to the address marked "Invoice Payments to Facility Contractor Only" below; this address is also provided on separate invoices issued from Facility Contractor.**

For UT-BATTELLE

Mark Reeves
Associate Director, Technology Transfer
Oak Ridge National Laboratory
One Bethel Valley Road
P.O. Box 2008
Oak Ridge, Tennessee 37831-6196
Voice: 865.576.2577
Email: reevesme@ornl.gov

For Patent Counsel

Emily G. Schneider, Esquire
Assistant Chief Counsel for Intellectual Property
U.S. Department of Energy
Oak Ridge Office
200 Administration Road
Oak Ridge, Tennessee 37831
Voice: 865.576.1077
Fax: 865.576.1556
Email: schneiderereg@oro.doe.gov

For CLIENT

Sponsor's Contract Officer's Name
Title
Address 1
Address 2
Address 3
City, State ZIP
Voice: XXX.XXX.XXXX
Email: ???@???.???

"Bill To" Address for CLIENT

Sponsor's "Bill To" Name
Title
Address 1
Address 2
Address 3
City, State ZIP
Voice: XXX.XXX.XXXX
Email: ???@???.???

Invoice Payments to UT-BATTELLE Only

VIA WIRE TRANSFER

Bank Name: US Treasury, New York, NY
ABA: 021030004
Account Number/Agency Location Code: 89000001
Beneficiary: UT-Battelle, LLC, Oak Ridge, TN

VIA AUTOMATED CLEARING HOUSE (ACH)

Depository Institution: Cashlink ACH Receiver—Federal Reserve
Routing Transit Number: 051036706
Account Name: UT-Battelle, LLC
Account Number: 349010
Type of Account: Checking

VIA EXPRESS MAIL

UT-Battelle, LLC
ATTN: Treasury Services MS-6437
One Bethel Valley Road
Oak Ridge, TN 37830

4. INTELLECTUAL PROPERTY

The reporting, protection and allocation of intellectual property made or created under this agreement shall be in accordance with the Appendix B, Intellectual Property Rights, attached hereto which is incorporated herein by reference.

5. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The CLIENT shall report to the DOE and UT-BATTELLE, promptly and in reasonable written detail, each claim of patent or copyright infringement based on the performance of this agreement of which the CLIENT has knowledge. The CLIENT shall furnish to the DOE and UT-BATTELLE, when requested by the DOE or UT-BATTELLE, all evidence and information in the possession of the CLIENT pertaining to such claim.

6. PUBLICITY

- A. UT-BATTELLE does not endorse products or services. Therefore, CLIENT agrees that it will not use or imply UT-BATTELLE's, ORNL's or DOE's name, or use UT-BATTELLE's reports, for advertising, promotional purposes, raising of capital, recommending investments, or in any way that implies endorsement by UT-BATTELLE, except with prior written approval of UT-BATTELLE.
- B. UT-BATTELLE does not undertake Projects for the purpose of litigation or to assign fault or blame and does not provide expert witness services. Therefore, CLIENT agrees not to use any Project results in any dispute, litigation, or other legal action.

7. LIMITATION OF LIABILITY

- A. UT-BATTELLE will provide a high standard of professional service on a best efforts basis. However, UT-BATTELLE, as a provider of such services, cannot guarantee success, thus **UT-BATTELLE MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, FOR ANY REPORT, DESIGN, ITEM, SERVICE OR OTHER RESULT TO BE DELIVERED UNDER THIS AGREEMENT.**
- B. CLIENT assumes responsibility for its use, misuse, or inability to use the Project results and in no event shall UT-BATTELLE have any liability for damages, including but not limited to any indirect, incidental, or consequential damages, arising from or in connection with this agreement.
- C. CLIENT agrees to indemnify and hold UT-BATTELLE and the Government harmless from any and all liabilities, suits, claims, demands, and damages, and all costs and expenses in connection therewith, in any manner relating to this agreement, its performance or products derived therefrom, asserted by third parties from any cause whatsoever, except for injury or damage occurring during performance of the Project on the premises of the ORNL where fault of CLIENT is not a contributing cause.

8. NATURE OF SERVICES

CLIENT agrees that UT-BATTELLE is an independent contractor and specifically acknowledges that UT-BATTELLE is a service provider, not a manufacturer or supplier. CLIENT retains all final decision-making authority and all responsibility for the formulation, design, manufacture, assembly, packaging, marketing and sale of CLIENT's products, including, without limitation, product labeling, warnings, instructions to users, and for obtaining any governmental or other pre- or postmarked approvals, certifications, registrations, licenses, or permits. The work conducted under this agreement must not interfere with or adversely affect projects and programs that UT-BATTELLE conducts on behalf of the Government and CLIENT understands and agrees that the Government work may take precedence over

the work performed by UT-BATTELLE under this agreement. The Government and UT-BATTELLE shall have the right to perform similar services in the Statement of Work for other parties as authorized by UT-BATTELLE's prime contract with the Department of Energy as long as neither Protected ACT Information generated under this agreement nor CLIENT's Proprietary Information is not used.

9. PRODUCT LIABILITY INSURANCE

CLIENT shall maintain adequate product liability insurance coverage in amounts customary and prudent for a responsible entity in its industry in light of the nature of its product(s). Such insurance shall specifically cover any CLIENT products that may be developed in whole or in part based on UT-BATTELLE's work under this agreement, and CLIENT shall provide evidence of such insurance upon request.

10. CLIENT PROPERTY

Any property, equipment, materials or other tangible property furnished by or purchased for CLIENT for use on the Project shall remain or be the property of CLIENT unless otherwise agreed in writing. UT-BATTELLE shall have no responsibility for insuring such property against loss or damage, and CLIENT, for itself and all persons claiming through CLIENT, hereby releases UT-BATTELLE, its officers, employees and agents, from any liability on account of loss or damage to CLIENT-furnished or – purchased property, excepting only loss or damage caused by UT-BATTELLE's gross negligence or willful misconduct. At the end of the Project, CLIENT's property shall be returned to CLIENT by UT-BATTELLE.

11. FORCE MAJEURE

Neither CLIENT nor UT-BATTELLE shall be liable in any way for failure to perform any provision of this agreement (except payment of monetary obligations) if such failure is caused by any law, rule, or regulation, or any cause beyond the control of the Party in default.

12. TERMINATION

Either Party shall have the right to terminate this agreement upon thirty (30) days' written notice for any good-faith basis. In the event of early termination, UT-BATTELLE agrees to provide CLIENT with all reports, materials, or other deliverable items available as of the date of the termination, provided that CLIENT is not in default of its obligations under this agreement. In any event, CLIENT agrees to pay all charges incurred or committed by UT-BATTELLE, including costs of termination, within thirty (30) days of receipt of a final invoice. In the event of early termination by CLIENT, no rights described in the Intellectual Property Article shall accrue to CLIENT.

13. U.S. EXPORT CONTROL

CLIENT agrees that it shall comply with all U.S. laws and regulations applicable to export of items or information. CLIENT agrees not to export or re-export any technical data, product(s), or the direct product of technical data received from UT-BATTELLE unless CLIENT has obtained in advance all required licenses, agreements or other authorizations from the U.S. Government.

14. GOVERNMENT DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN UT-BATTELLE ACTING IN A PRIVATE CAPACITY AND CLIENT. THE UNITED STATES GOVERNMENT IS **NOT** A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES 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 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 SHALL NOT 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 AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

15. ENTIRE AGREEMENT

This agreement, including the Statement of Work incorporated herein, represents the entire agreement of the Parties and supersedes any prior discussions or understandings, whether written or oral, relating to the subject matter hereof. This agreement may be modified or amended only by mutual agreement in writing. No course of dealing, usage of trade, waiver, or non-enforcement shall be construed to modify or otherwise alter the terms and conditions of this agreement. In the event of any conflict or inconsistency between these terms and conditions and the Statement of Work, these terms and conditions shall control.

16. APPLICABLE LAW

CLIENT and UT-BATTELLE agree to make good-faith efforts to settle any dispute or claim that arises under this agreement through discussion and negotiation. The Parties may consider the use of alternative disputes resolution (ADR). In the event mediation or arbitration is mutually agreed upon, costs shall be mutually shared by CLIENT and UT-BATTELLE and it is agreed 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 brought in the Chancery Court of Knox or Roane County, Tennessee. The Parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Tennessee state law.

17. MISCELLANEOUS

This agreement may not be assigned in whole or in part without the prior written approval of both Parties. In any event, however, this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the successors, assigns and transferees of the Parties. If any part of this agreement shall be held invalid or unenforceable, such invalidity and unenforceability shall not affect any other part of this agreement. Captions used as headings in this agreement are for convenience only and are not to be construed as a substantive part of this agreement.

In witness whereof, the Parties have executed this Agreement.

For CLIENT

For UT-BATTELLE

Signature

Signature

Client Signatory's Name
Name

James B. Roberto
Name

Client Signatory's Title
Title

Deputy Laboratory Director
Title

Date

Date

DRAFT

**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

Client

Client Address 1

Client Address 2

Client Address 3

UT-Battelle

ACT Project Number ACT-1X-0000X

Prepared Under DOE Contract # DE-AC05-00OR22725

Between

DOE

and

UT-Battelle, LLC

Title of Project

Agreement to Commercialize Technology (ACT) Project Number ACT-1X-0000X

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 MILESTONES/DELIVERABLES

Provide a list of the kinds of deliverables anticipated to be delivered to the sponsor for the work performed under each task. Keep in mind that these will only be “planned” or “anticipated” deliverables, as UT-Battelle is unable to make a firm commitment to deliverables as a condition of entering into a Work For Others Agreement.

5.0 BUDGET

This budget table may or may not fit the needs of the individual project being described in this SOW. The Proposer should feel to modify or substitute the table as required.

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 1	\$	\$	\$	\$	\$	\$
FAC*	\$	\$	\$	\$	\$	\$
Subtotal 2	\$	\$	\$	\$	\$	\$
ACT Fees	\$	\$	\$	\$	\$	\$
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

INTELLECTUAL PROPERTY RIGHTS

(The terms and conditions contained in Appendix B are non-negotiable and must be included in the final, executed agreement.)

Patent and Data Rights under this ACT Agreement will be governed by one of the following sets of terms and conditions:

Patent Waiver (Full Government License); Proprietary Data Rights

1. Rights in intellectual property under this Agreement will be in accordance with APPENDIX A – INTELLECTUAL PROPERTY RIGHTS (STANDARD) of DOE ACT Class Waiver W(C)-2011-013, which is hereby incorporated into this Agreement by reference.
2. CLIENT (ACT Participant) is the IP Lead.
3. In Article 1.A of both the PATENT RIGHTS and RIGHTS IN TECHNICAL DATA sections of said APPENDIX C, Name of Facility Contractor is UT-Battelle, LLC; Name of Facility is Oak Ridge National Laboratory; DOE Prime Contract Number is DE-AC05-00OR22725.
4. In Article 3.B (7) of the PATENT RIGHTS section of said APPENDIX C, the reference to the underlying Agreement is ACT Agreement No. ACT-1X-000XX.
5. In Article 4.B, of the PATENT RIGHTS section of said APPENDIX C, the Contract Number is DE-AC05-00OR22725.

Patent Waiver (R&D Only Government License); Protected ACT Information

1. Rights in intellectual property under this Agreement will be in accordance with APPENDIX C – INTELLECTUAL PROPERTY RIGHTS (ALTERNATE II) of DOE ACT Class Waiver W(C)-2011-013, which is hereby incorporated into this Agreement by reference.
2. The CLIENT (ACT Participant) is the IP Lead.
3. In Article 1.A of both the PATENT RIGHTS and RIGHTS IN TECHNICAL DATA sections of said APPENDIX C, Name of Facility Contractor is UT-Battelle, LLC; Name of Facility is Oak Ridge National Laboratory; DOE Prime Contract Number is DE-AC05-00OR22725.
4. In Article 3.B (7) of the PATENT RIGHTS section of said APPENDIX C, the reference to the underlying Agreement is ACT Agreement No. ACT-1X-000XX.
5. In Article 4.B, of the PATENT RIGHTS section of said APPENDIX C, the Contract Number is DE-AC05-00OR22725.
6. In Article 4 of the RIGHTS IN TECHNICAL DATA section of said APPENDIX C, the period of protection for Protected ACT Information is ??? (X) years.

No Patent Waiver; Nonproprietary Data Rights

1. Rights in intellectual property under this Agreement will be in accordance with APPENDIX B – INTELLECTUAL PROPERTY RIGHTS (ALTERNATE I) of DOE ACT Class Waiver W(C)-2011-013, which is hereby incorporated into this Agreement by reference.

2. In Article 1.B of the PATENT RIGHTS section, and in Article 1.A of the RIGHTS IN TECHNICAL DATA section, of said APPENDIX C, Name of Facility Contractor is UT-Battelle, LLC; Name of Facility is Oak Ridge National Laboratory; DOE Prime Contract Number is DE-AC05-00OR22725.