

WORK FOR OTHERS AGREEMENT WITH NON-FEDERAL SPONSORS

WORK FOR OTHERS AGREEMENT NO. _____

BETWEEN

UCHICAGO ARGONNE, LLC
AS OPERATOR OF ARGONNE NATIONAL LABORATORY
OPERATING UNDER PRIME CONTRACT NO. DE-AC02-06CH11357
FOR THE
U. S. DEPARTMENT OF ENERGY

AND

The obligations of UChicago Argonne, LLC, as Operator of ARGONNE NATIONAL LABORATORY shall apply to any successor in the interest of continuing the operation of ARGONNE NATIONAL LABORATORY.

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ARTICLE I - PARTIES TO THE AGREEMENT

UChicago Argonne, LLC as operator of ARGONNE NATIONAL LABORATORY operating under Prime Contract No. DE-AC02-06CH11357 for the U. S. DEPARTMENT OF ENERGY, hereinafter referred to as the "Laboratory," has been requested by (insert here the name of the non-Federal Sponsor), hereinafter referred to as the "Sponsor," to perform the work on a best effort basis as set forth under Work For Other (WFO) Proposal No. _____, attached hereto as Appendix A. It is understood by the Parties that, except for the intellectual property provisions of this Agreement, the Laboratory is obligated to comply with the terms and conditions of its Agreement with the United States Government (hereinafter called the "Government") represented by the United States Department of Energy (hereinafter called the "Department" or "DOE") when providing goods, services, products, processes, materials, or information to the Sponsor under this Agreement.

ARTICLE II - TERM OF THE AGREEMENT

The Laboratory estimated period of performance for completion of the Statement of Work is _____ months. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties thereto.

ARTICLE III - COSTS

- A. The Laboratory estimated cost for the work to be performed under this Agreement is \$_____.
- B. The Laboratory has no obligation to continue or complete performance of the work at a cost in excess of its estimated cost, including any subsequent amendment.

ARTICLE IV - FUNDING AND PAYMENT

The Sponsor shall pay the Laboratory the following advance payment and monthly invoice payments:

- A. Advance Payment. The Sponsor shall advance the following amount at the time shown:

<u>Amount Due</u>	<u>Date Due</u>
\$ _____	_____

Advance payment shall be recorded in the Laboratory's account until the last three (3) months of the Agreement term at which time it shall be liquidated by charging costs incurred during that period to the advance payment account. Advance payment in excess

of total costs incurred by the Laboratory under this Agreement shall be refunded to the Sponsor.

- B. Monthly Invoice Payments. Once each month during the Agreement term the Laboratory shall invoice the Sponsor for costs incurred in the previous month. Payment for such costs shall be due not later than thirty (30) days after the invoice date, except to the extent the invoice states that costs are being charged to the advance payment account as provided in Paragraph A above.
- C. Applicable Currency. All payments due the Laboratory under this Agreement, including cost estimates and obligations of funds, shall be in United States dollars (U.S.\$).

ARTICLE V - SOURCE OF FUNDS

The Sponsor hereby warrants and represents that, the funding it brings to this Agreement does not include any federal funds, and it has no other agreements that have terms and conditions including intellectual property conflicting with this Agreement.

ARTICLE VI - PROPERTY

Unless the Parties otherwise agree in writing, each piece of equipment having a value in excess of \$5,000.00 produced or acquired with funds provided by the Sponsor shall be disposed of as instructed by the Sponsor, and any and all costs associated with the disposal of such property shall be at the Sponsors expense. Any piece of equipment produced or acquired under \$5,000.00 shall become property of the Laboratory on behalf of the Government.

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 prepared under this Agreement that disclose technical developments and/or research findings generated in the course of this Agreement. 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 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:

THIS MATERIAL WAS PREPARED AS AN ACCOUNT OF WORK SPONSORED BY UNIVERSITY OF TEXAS. NEITHER THE AUTHORS, UNITED STATES GOVERNMENT NOR ANY AGENCY THEREOF, NOR UCHICAGO ARGONNE, LLC, NOR ANY OF THEIR EMPLOYEES OR OFFICERS, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR 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 HEREIN TO ANY SPECIFIC COMMERCIAL PRODUCT, PROCESS, OR SERVICE BY TRADE NAME, TRADEMARK, MANUFACTURER, OR OTHERWISE, DOES NOT NECESSARILY CONSTITUTE OR IMPLY ITS ENDORSEMENT, RECOMMENDATION, OR FAVORING BY THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF. THE VIEW AND OPINIONS OF AUTHORS EXPRESSED HEREIN DO NOT NECESSARILY STATE OR REFLECT THOSE OF THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF.

ARTICLE IX - DISCLAIMER

THE GOVERNMENT AND THE LABORATORY 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 LABORATORY 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 Laboratory, 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 the Agreement by the Government, the Department, the Laboratory, 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 Laboratory, 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 Laboratory, the Sponsor agrees to indemnify the Government and the Laboratory 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 Work for Others Agreement. In respect to this Article, neither the Government nor the Laboratory shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Laboratory 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 Laboratory 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 Laboratory 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 Laboratory 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 Laboratory, 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 Laboratory, when requested by the Department or the Laboratory, all evidence and information in the possession of the Sponsor pertaining to such claim.

ARTICLE XIV - PATENT RIGHTS

A. Definitions

1. "Subject Invention" means any invention or discovery of the Laboratory, or, to the extent the Sponsor is performing any work under this Agreement, of the Sponsor, conceived in the course of or under this Agreement, or, in the case of an invention previously conceived by the Sponsor, first actually reduced to practice in the course of or under this Agreement. "Subject Invention" includes any art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, whether patented under the Patent Laws of the United States of America or any foreign country, or unpatented.

2. "Patent Counsel" means the DOE Patent Counsel assisting the procuring activity which has the administrative responsibility for the facility where the work under this Agreement is to be performed.

B. Rights of the Sponsor; Election to Retain Rights

Subject to the provisions of paragraph C.2. with respect to any Subject Invention reported and elected in accordance with paragraph D. of this article, the Sponsor may elect to obtain the entire right, title, and interest throughout the world to each Subject Invention and any patent application filed in any country on a Subject Invention and in any resulting patent secured by the Sponsor. Where appropriate, the filing of patent applications by the Sponsor is subject to DOE and other Government security regulations and requirements.

C. Rights of Laboratory and Government

1. Assignment to either the Laboratory or the Government

The Sponsor agrees to assign to either the Laboratory or the Government, as requested by the Laboratory, the entire right, title, and interest in any country to each Subject Invention of the Sponsor and to each Subject Invention of the Laboratory (where the Sponsor has acquired the rights to that Laboratory Subject Invention) where the Sponsor:

- a. does not elect pursuant to this article to retain such rights; or
- b. elects to obtain title to a Subject Invention pursuant to paragraph B. but fails to have a patent application filed in that country on the Subject Invention or decides not to continue prosecution or not to pay any maintenance fees covering the invention.

2. Terms and Conditions of Waived Rights

- a. To preserve the Laboratory's and the Government's residual rights to Subject Inventions, and in patent applications and patents on Subject Inventions, the Sponsor shall take all actions in reporting, electing, filing on, prosecuting, and maintaining invention rights promptly, but in any event, in sufficient time to satisfy domestic and foreign statutory and regulatory time requirements, or, if the Sponsor decides not to take appropriate steps to protect the invention rights, it shall notify the Laboratory in sufficient time to permit either the Laboratory or the Government to file, prosecute, and maintain patent applications and any resulting patents prior to the end of such domestic or foreign statutory or regulatory time requirements.

- b. The Sponsor shall convey or ensure the conveyance of any executed instruments necessary to vest in either the Laboratory or the Government the rights set forth in this article.
- c. With respect to any Subject Invention in which the Sponsor obtains title, the Sponsor hereby grants to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced by or on behalf of the United States the Subject Invention throughout the world.
- d. The Sponsor shall provide the Government a copy of any patent application filed on a Subject Invention within 6 months after such application is filed, including its serial number and filing date.
- e. Preference for U.S. Industry. Notwithstanding any other provision of this article, the Sponsor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Sponsor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- f. March-In Rights. The Sponsor agrees that with respect to any Subject Invention of the Laboratory in which it has acquired title, the DOE shall retain the right to require the Sponsor to grant a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the Subject Invention in any field of use, on terms that are reasonable under the circumstances, or if the Sponsor fails to grant such a license, to grant the license itself. DOE may exercise this right only in exceptional circumstances and only if DOE determines that:
 - (1) the action is necessary to meet health or safety needs that are not reasonably satisfied by the Sponsor; or
 - (2) the action is necessary to meet the requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Sponsor; or
 - (3) such action is necessary because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of the agreement required by paragraph C.2.e.

- g. The Sponsor agrees to refund any amounts received as royalty charges on any Subject Invention in procurement by or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the invention.
- h. The Sponsor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a Subject Invention, the following statement. "The Government has rights in this invention pursuant to (specify this underlying Agreement)."

D. Invention Identification, Disclosures, and Reports

- 1. The Sponsor shall furnish the Patent Counsel a written report containing full and complete technical information concerning each Subject Invention it makes within 6 months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Sponsor. 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 to the extent known at the time of disclosure, 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 invention rights under this article. When an invention is reported under this paragraph D.1, it shall be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 USC 5908.
- 2. The Laboratory shall report Subject Inventions it makes in accordance with the procedures set forth in Prime Contract No. DE-AC02-06CH11357. In addition, the Laboratory shall disclose to the Sponsor at the same time as disclosure to the Department any Subject Inventions made by the Laboratory under this Agreement and the Sponsor shall notify the Department within 6 months of receipt of such disclosure by the Sponsor of any election of patent rights under this article.
- 3. Requests for extension of time for election under subparagraphs 1. and 2. may be granted by Patent Counsel for good cause shown in writing.

E. Limitation of Rights

Nothing contained in this patent rights article 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 F.

F. 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 Sponsor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or first actually reduced to practice or acquired by the Sponsor, which at any time, through completion of this Agreement, are owned or controlled by the Sponsor 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 (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of the 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. Early Termination of Agreement

The terms and conditions of this article shall survive the Agreement, in the event that the Agreement is terminated before completion of the Statement of Work.

ARTICLE XV - RIGHTS IN TECHNICAL DATA

A. The following definitions shall be used

1. "Generated Information" means information produced in the performance of this Agreement.
2. "Proprietary Information" means information which is developed at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 USC 552 (b)(4)).
3. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

B. The Sponsor agrees to furnish to the Laboratory or leave at the facility that information, if any, which is (1) essential to the performance of work by the Laboratory personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Laboratory shall be deemed to have been delivered with Unlimited Rights unless marked as Proprietary Information. The Sponsor agrees that it has the sole responsibility for appropriately identifying and marking all documents containing Proprietary Information, whether such documents are furnished by the Sponsor or produced under this Agreement and made available to the Sponsor for review.

C. The Sponsor may designate as Proprietary Information any Generated Information where such data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it were obtained from the Sponsor. Such

Proprietary Information will, to the extent permitted by law, be maintained in confidence and disclosed or used by the Laboratory (under suitable protective conditions) only for the purpose of carrying out the Laboratory's responsibilities under this Agreement. Upon completion of activities under this Agreement, such Proprietary Information will be disposed of as requested by the Sponsor. Before the Laboratory releases data associated with this Agreement to anyone, the Sponsor will be afforded the opportunity to review that data to ascertain whether it is Proprietary Information and to mark it as such.

- D. The Government and Laboratory agree not to disclose properly marked Proprietary Information to anyone other than the Sponsor without written approval of the Sponsor, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 USC 1905). The Government and Laboratory shall have the right, at reasonable times up to 3 years after the termination or completion of the Agreement, to inspect any information designated as Proprietary Information by the Sponsor, for the purpose of verifying that such information has been properly identified as Proprietary Information.
- E. The Sponsor is solely responsible for the removal of all of its Proprietary Information from the facility by or before termination of this Agreement. The Government and Laboratory shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement. The Government and Laboratory shall have Unlimited Rights in any Proprietary Information which is incorporated into the facility or equipment under this Agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation.
- F. The Sponsor agrees that the Laboratory will provide to the Department a nonproprietary description of the work performed under this Agreement.
- G. The Government shall have Unlimited Rights in all Generated Information produced or information provided by the Parties under this Agreement, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection, or which is marked as being Proprietary Information.
- H. Copyrights. The Sponsor may assert copyright in any of its Generated Information, and may also require the Laboratory, at the Sponsor's expense, to register copyright and assign copyright in any Generated Information produced by the Laboratory which the Sponsor wishes to copyright. Subject to the other provisions of this article, and to the extent that copyright is asserted, the Government reserves for itself a royalty-free, world-wide, irrevocable, non-exclusive license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such data assigned to the Sponsor.
- I. The terms and conditions of this article shall survive the Agreement, in the event that the Agreement is terminated before completion of the Statement of Work.

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 Laboratory may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Laboratory 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 Laboratory shall have the right to perform similar or identical services in the Statement of Work (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 herein, upon giving a thirty (30) day written notice to the other Party. Such notice will be effective upon receipt of written notice by the other Party. In the event of termination, the Sponsor shall be responsible for the Laboratory'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 IV, 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 this Agreement.

ARTICLE XX - APPLICABLE LAW

The Parties shall attempt to jointly resolve all disagreements arising from this Agreement. If the Parties are unable to jointly resolve a disagreement within a reasonable period of time after submission of the disagreement for resolution, said disagreement shall be adjudicated in a court of competent jurisdiction in the State of Illinois. To the extent that there is no applicable U.S. Federal law, this Agreement and performance thereunder shall be governed by the law of the State of Illinois.

(Signatures block on next page)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT.

FOR UCHICAGO ARGONNE, LLC

(As Operator of ARGONNE NATIONAL LABORATORY):

By: _____

Title: Contract Specialist

Date: _____

:

By: _____

Title: _____

Date: _____