

**Strategic Partnership Projects Agreement No. \_\_\_\_\_**

**Between**

**The Regents of the University of California  
as the Management and Operating Contractor for the  
Ernest Orlando Lawrence Berkeley National Laboratory  
Operating Under Prime Contract No. DE-AC02-05CH11231 for the  
U. S. Department of Energy**

**And**

**(Insert here the name of the non-Federal Sponsor)  
(each a "Party")**

The obligations of the above-identified DOE Contractor shall apply to any successor in interest to said Contractor continuing the operation of the DOE facility involved in this Strategic Partnership Projects Agreement.

**ARTICLE I. PARTIES TO THE AGREEMENT**

The Regents of the University of California as the U. S. Department of Energy Management and Operating Contractor for the Ernest Orlando Lawrence Berkeley National Laboratory, hereinafter referred to as the "Contractor," has been requested by (insert here the name of the non-Federal Sponsor), hereinafter referred to as the "Sponsor," to perform the work set forth in the Statement of Work, attached hereto as Appendix A. It is understood by the Parties that the Contractor is obligated to comply with the terms and conditions of its M&O contract 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 Contractor estimated period of performance for completion of the Statement of Work is \_\_\_\_\_ months. The term of this Agreement shall be effective as of the latter date of (1) the date on which it is signed by the last of the Parties thereto, or (2) the date on which it is approved by DOE, or (3) the receipt of the advance payment, as required under Article IV.

Notwithstanding the above, the Contractor may elect to temporarily authorize use of its own funds to enable the start of work prior to the receipt of Sponsor's advance payment required in Article IV. The temporary use of Contractor's funds does not relieve the Sponsor's requirement to provide the advance payment on a timely basis as required in Article IV and any costs charged to temporary Contractor funds shall be allowable and reimbursable by the Sponsor under this Agreement. If Contractor's funds are used, the effective date shall be the date the funds are approved.

**ARTICLE III. COSTS**

- A. The Contractor estimated cost for the work to be performed under this Agreement is \$ \_\_\_\_\_.
- B. The 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.
- C. The 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 (partial advance)**

The Sponsor shall pay the Contractor 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>
\$ _____	00/00/00

This is a partial advance for the estimated cost. Once received, this advance will be held to pay for approximately the last four months of incurred costs on the project (or until the amounts on the month invoices plus the advance payment equals the contractual cost limitation level authorized under this agreement).

All advance payments must be made in US dollars. For foreign wire transfers, please add \$30 to the invoice amount to cover payment charges levied by the Sponsor's banking institution.

- B. Monthly Invoice Payments.

Once each month during the Agreement term, the Contractor shall invoice the Sponsor for costs incurred in the previous month. Payment for such costs shall be due upon receipt of the invoice.

Contractor is not obligated to continue the work unless it is holding an adequate advance and may stop work if the monthly invoices are not paid on a timely basis.

When the advance payment plus the amounts paid in response to the monthly invoices equals the contractual cost limitation, the advance payment will be applied to pay for the remaining costs incurred on the agreement. From that time forth, monthly Expense Statements showing actual costs incurred for the month and the balance remaining in the agreement are mailed to the Sponsor for information only. The expense statements are not requests for payment.

Upon completion of the project there will be a reconciliation of the total costs incurred to total payments received and a final expense statement along with any remaining advance will be returned to the Sponsor.

- C. The Sponsor shall provide the contact information where invoices shall be sent as well as all financial information below. This information is mandatory. Any terms and conditions associated with a Purchase Order Number are not applicable to this Agreement.

Sponsor Reference No. if applicable: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone with area code: \_\_\_\_\_

Email: \_\_\_\_\_

Tax ID Number (TIN): \_\_\_\_\_

DUNS Number: \_\_\_\_\_

**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.

**ARTICLE VI. PROPERTY**

Unless specifically stated otherwise in Appendix A, Statement of Work, any personal property or equipment with a value greater than [\$5,000] produced or acquired with the Sponsor's funds under this Agreement, will be owned by the Sponsor and will be disposed of as directed by the Sponsor at the Sponsor's expense. Any personal property, supplies, or equipment having a value less than [\$5,000] produced or acquired under this Agreement will 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**

Either Party may publish Generated Information as defined in Paragraph A.(1) of Article XV. The publishing Party will provide to the other Party for its review, a copy of the proposed publication 30 days prior to its intended publication. The other Party may request a reasonable delay in publication if the proposed publication contains unprotected patentable information or Proprietary Information provided by either Party.

**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 document may contain research results which are experimental in nature. Neither the United States Government, nor any agency thereof, nor The Regents of the University of California, 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 The Regents of the University of California. 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 The Regents of the University of California and shall not be used for advertising or product endorsement purposes.

**ARTICLE IX. DISCLAIMER**

**THE GOVERNMENT AND THE 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 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**

The Sponsor agrees to indemnify and hold harmless the Government, the Department, the 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 the Agreement by the Government, the Department, the 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 Contractor, or persons acting on their behalf.

**ARTICLE XI. PRODUCT LIABILITY INDEMNITY**

Sponsor agrees to indemnify the Government and the Contractor for all damages, cost and expenses, including attorney's fees, arising from the commercialization and utilization of technologies, including, but not limited to, the making, using, selling or exporting of a product, process or service by or on behalf of the Sponsor, its assignees or licensees, which were derived from the work performed under this Agreement. In respect to this Article, neither the Government nor the Contractor shall be considered assignees or licensees of the Sponsor, as a result of reserved Contractor and/or Government 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 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 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 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 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 Contractor, when requested by the Department or the Contractor, all evidence and information in the possession of the Sponsor pertaining to such claim.

**ARTICLE XIV. PATENT RIGHTS**

1. The following definitions shall be used for this Clause.

- A. "Subject Invention" means any invention or discovery of the Facility Contractor, or, to the extent the Sponsor or a Facility subcontractor is performing any work under this Agreement, of the Sponsor or Facility subcontractor respectively, conceived in the course of, or under this Agreement or, in the case of an invention previously conceived by the Sponsor or Facility subcontractor, 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.

- B. "Facility Contractor" means The Regents of the University of California as Operator of Ernest Orlando Lawrence Berkeley National Laboratory, operating under DOE Prime Contract No. DE-AC02-05CH11231 or any successor contractor thereof.
- 2. Any Subject Invention made by the Facility Contractor under this Agreement will be governed by the provisions of the Facility Prime Contract with the DOE.
- 3. The Sponsor and Facility subcontractor(s), as applicable, may retain title to their own Subject Inventions, subject to, the Government retaining a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced by or on behalf of the United States the Subject Inventions throughout the world, a requirement to report their Subject Inventions to DOE within 6 months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, U.S. Preference (35 U.S.C. § 204), and such other conditions consistent with DOE patent waiver policy.

**ARTICLE XV. RIGHTS IN TECHNICAL DATA - USE OF FACILITY**

- 1. The following definitions shall be used.
  - A. "Facility Contractor" means The Regents of the University of California as Operator of Ernest Orlando Lawrence Berkeley National Laboratory, operating under DOE Prime Contract No. DE-AC02-05CH11231 or any successor contractor thereof.
  - B. "Generated Information" means information produced in the performance of this Agreement or any Facility subcontract under this Agreement.
  - C. "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)).
  - D. "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.
- 2. For work performed at the DOE/NNSA Facility, the Sponsor agrees to furnish to the Facility Contractor or leave at the facility that information, if any, which is (1) essential to the performance of work by the Facility Contractor personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Facility Contractor 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.
- 3. The Sponsor, Facility Contractor, and the Government shall have Unlimited Rights in all Generated Information, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection.
- 4. The Government and Facility Contractor agree not to disclose properly marked Proprietary Information 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).
- 5. 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 Facility Contractor shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement. The Government and Facility Contractor 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.

6. The Sponsor agrees that the Facility Contractor will provide to the Department a nonproprietary description of the work performed under this Agreement.
7. The Government shall have Unlimited Rights in all Generated Information produced or information provided to the Facility Contractor 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.
8. Copyrights. The Parties may assert copyright in any of their Generated Information. Subject to the other provisions of this clause, and to the extent copyright is asserted, the Government reserves for itself and others acting in its behalf, a paid-up, world-wide, irrevocable, non-exclusive license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such copyrighted works.
9. 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 Contractor may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the 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 Contractor 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**

- A. Each Party is responsible for its own compliance with laws and regulations governing export control.
- B. Notwithstanding the above or any other clause in this Agreement, Sponsor acknowledges that Contractor has many foreign employees and students. The Sponsor agrees that the Contractor will conduct this project as fundamental research with no restrictions on publication. Accordingly, Sponsor agrees not to direct Contractor to create export controlled information and Sponsor agrees not to transfer to Principal Investigator or other Contractor employees or students, any Proprietary Information that is export controlled under the Export Administration Regulations or the International Traffic in Arms Regulations.

#### **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 sixty (60) day written notice to the other Party. The Contractor shall terminate this Agreement only when the Contractor determines, after direction from DOE, that such termination is in the best interest of the Government, provided however, that the 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 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, 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 hereto have executed this Agreement.*

**FOR SPONSOR**

**FOR THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA  
AS MANAGEMENT AND OPERATING  
CONTRACTOR FOR THE  
ERNEST ORLANDO LAWRENCE  
BERKELEY NATIONAL LABORATORY**

<b>By:</b> _____	<b>By:</b> _____
<b>Name:</b> _____	<b>Name:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____

SAMPLE