

TECHNICAL SERVICE AGREEMENT No. _____

Article I. Parties to the Agreement

The Parties to this Agreement are UChicago Argonne, LLC as operator of ARGONNE NATIONAL LABORATORY (“the Laboratory”) operating under Prime Contract No. DE-AC02-06CH11357 (“Prime Contract”) with the United States Government (“Government”) represented by the U. S. DEPARTMENT OF ENERGY (“DOE”), and _____ (“Sponsor”). The Laboratory agrees to perform the work on a best effort basis as set forth under Proposal No. _____ attached hereto as Appendix A. It is understood by the Parties that the Laboratory is obligated to comply with the terms and conditions of the Prime Contract 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 work described in Appendix A is through _____. The effective date of this Agreement shall be the date on which it is signed by the last of the Parties below.

Article III. Costs and Payments

The Laboratory shall recover the actual cost of the work estimated to be _____. Services are charged at the rate in effect during the month in which the services are performed. 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.

A. The Sponsor shall advance the following amount in United States dollars (U.S.\$) at the time shown below:

<u>Amount Due</u>	<u>Date Due</u>
_____	Upon execution of Agreement

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. 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.

Article IV. Patents

All of the work performed by the Laboratory shall be in accordance with the requirements of the Prime Contract, as amended, and all rights in data and in inventions made in the course of or under this Agreement will be in accordance with the terms of the Prime Contract.

Article V. Rights in Technical Data – Use of Facility

- 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)).

"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 DOE 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 work as described in Appendix A.

Article VI. 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 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 AGREEMENT.

NEITHER THE GOVERNMENT, THE DOE, THE LABORATORY, NOR PERSONS ACTING ON THEIR BEHALF WILL BE RESPONSIBLE, IRRESPECTIVE OF CAUSES, FOR FAILURE TO PERFORM THE SERVICES OR FURNISH THE MATERIALS OR INFORMATION HEREUNDER AT ANY PARTICULAR TIME OR IN ANY SPECIFIC MANNER THEREFOR WHERE APPROPRIATE.

Article VII. General Indemnity

The Sponsor agrees to indemnify and hold harmless the Government, the DOE, 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 DOE, 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 DOE, the Laboratory, or persons acting on their behalf.

Article VIII. 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 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 Article 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 IX. 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 X. Export Control

The Parties understand that materials and information resulting from the performance of this Agreement may be subject to export control laws and that each Party is responsible for its own compliance with such laws.

Article XI. 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 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 this Agreement.

Article XII. Sponsor's Purchase Order

Any terms and conditions appearing on Sponsor's purchase order shall have no force or effect. The above terms and conditions hereof are the only terms and conditions applicable to this transaction.

(See next page for signatures)

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

FOR UCHICAGO ARGONNE, LLC
(As Operator of ARGONNE NATIONAL LABORATORY):

By: _____

Title: _____

Date: _____

FOR (SPONSOR):

By: _____

Title: _____

Date: _____