

**USER FACILITY AGREEMENT FOR USE OF THE  
IDAHO NATIONAL LABORATORY ADVANCED TEST REACTOR**

**A DOE DESIGNATED USER FACILITY**

This User Facility Agreement is entered into by

BATTELLE ENERGY ALLIANCE, LLC, (CONTRACTOR),

which manages and operates the IDAHO NATIONAL LABORATORY (INL), under Contract No. DE-AC07-05ID14517 (PRIME CONTRACT) with the U.S. Government as represented by the U.S. Department of Energy (DOE),

and

\_\_\_\_\_(USER),

(Collectively, the PARTIES).

**ARTICLE 1: SCOPE OF SERVICES**

The USER will be granted access to the Idaho National Laboratory Advanced Test Reactor and associated facilities, equipment, services, information, and other associated material (FACILITY) for the conduct of research under the terms and conditions of this Agreement. The research must first receive programmatic approval of the CONTRACTOR and is subject to the FACILITY being available. The CONTRACTOR's grant or denial of approval and determination of the FACILITY being available is final.

To receive such approval, the USER must provide a User Research Proposal attached as Appendix A disclosing a non-proprietary functional description of the research. Any User Research Proposal that is not approved by the CONTRACTOR shall be returned to the USER and the CONTRACTOR, and DOE shall obtain no rights in such proposal. Upon approval of a User Research Proposal by CONTRACTOR, USER and CONTRACTOR will endeavor to jointly develop a mutually acceptable Statement of Work (SOW) attached as Appendix B under which all research will be conducted hereunder.

**ARTICLE 2: COSTS and EXPENSES**

The USER will bear its own costs and expenses associated with the research to be conducted under this Agreement which are not explicitly addressed in attached Appendix C and will comply with the terms and conditions regarding any funding to be provided to CONTRACTOR in accordance with the funding terms and conditions set forth in attached Appendix C.

**ARTICLE 3: ADMISSION REQUIREMENTS**

- A. **General** – The USER is subject to the administrative and technical supervision and control of CONTRACTOR and will comply with all applicable rules of CONTRACTOR and DOE with regard to admission to and use of the FACILITY, including, but not limited to, safety, security, operations, health-physics procedures, environmental protection, access to equipment and information, hours of work, and conduct. The USER is required to obtain documentation and agreements from each of its employees or

Approved as to legal form: W.A. Eklund 8/11/08  
William A. Eklund Date 1  
University Counsel  
Office of General Counsel

representatives as necessary to implement the provisions of this Agreement. USER's employees, agents, and representatives will not be considered employees of CONTRACTOR or DOE for any purpose.

- B. Environmental, Safety, Health, and Security** - USER shall take all reasonable precautions to protect the safety, health, integrity of all individuals, property, and the environment during all phases of USER's research and activities at the FACILITY. The USER shall comply with all applicable safety, security, operational, health, and environmental regulations and requirements of the FACILITY, the CONTRACTOR, and the U.S. Government, including the requirements of 10 CFR 851 as applicable. If for any reason the CONTRACTOR determines or suspects that USER is failing to comply with any applicable regulations or requirements or is creating an unacceptable risk to safety, health, or security, the CONTRACTOR or DOE may, without prejudice to any other legal or contractual rights, issue an immediate stop work order stopping all or any part of USER's activities at the FACILITY.
- C. ISMS** - CONTRACTOR's Integrated Safety Management System ("ISMS") must be used by all employees, contractors, consultants and other representatives of CONTRACTOR and USER to establish work planning and control requirements so that all work is planned and implemented properly, hazards and risks are identified and controlled, resources are scheduled and coordinated, and appropriate feedback mechanisms are in place. Work includes, but is not limited to, any activities that involve the design, conduct and completion of research, testing, and experiments by the CONTRACTOR or USER.
- D. Training** - CONTRACTOR has established methods and training programs in accordance with best practices and regulatory requirements for work to be performed, hazards that may be encountered, areas to be accessed, potential for risk, and general and specific site requirements. CONTRACTOR's Training and Qualifications Program ensures that employees, contractors, consultants, and other representatives of CONTRACTOR and USER are trained and qualified to perform their assigned tasks and job functions.
- E. Employees** - Individuals for whom USER is responsible, including employees of USER and individuals who are not actual employees of USER, shall complete all training and execute all documents required by CONTRACTOR or DOE to access and use the FACILITY.

#### **ARTICLE 4: PROPERTY AND MATERIALS**

USER may furnish CONTRACTOR approved equipment, tooling, test apparatus, or materials necessary to assist in the performance of its research and experiment(s) at the FACILITY. Such items shall remain the property of USER. Unless the PARTIES otherwise agree by written amendment to this Agreement, all such property furnished by USER or equipment and test apparatus provided by USER will be removed by USER within one (1) calendar month of termination of this Agreement, or within one (1) calendar month of termination of the relevant experiment or work set forth in the SOW, whichever occurs first, and will be disposed of in accordance with this Agreement and at the cost of USER if not explicitly addressed in the App. C. Any equipment that becomes integrated into the FACILITY shall become the property of the U.S. Government. USER acknowledges that any material supplied by USER may be damaged, consumed or lost. Materials (including residues and/or other contaminated material or wastes) remaining after performance of the SOW will be removed in their then condition through appropriate waste streams available to CONTRACTOR as addressed in the SOW, and USER will be responsible for the associated costs as set forth in App. C. USER, at its expense, will return FACILITIES and equipment utilized to their original condition except for normal wear and tear.

CONTRACTOR shall have no responsibility for USER's property in CONTRACTOR's possession.

USER shall be responsible for stewardship of U.S. Government property if provided or acquired for use under this Agreement. Specific requirements will be described in an attachment to this Agreement when applicable.

#### **ARTICLE 5: AVAILABILITY & SCHEDULING**

CONTRACTOR will have sole responsibility and sole discretion for determining suitability, availability, allocating, and scheduling usage of the FACILITY, personnel, and equipment needed for or involved in the research and experimentation set forth in the SOW. The Parties acknowledge that it may be necessary for

CONTRACTOR, in its sole discretion, to require the SOW to be modified or amended in order for the research and experimentation to be conducted.

#### **ARTICLE 6: INTELLECTUAL PROPERTY**

The rights of the USER regarding Subject Inventions, patents, Technical Information, Proprietary Information, copyrights or other intellectual property that may arise under this Agreement are set forth in attached Appendix D: Intellectual Property Provisions issued by DOE in \_\_\_\_\_, 2008.

Individuals and third parties for whom USER is responsible, but who are not actual employees of USER, shall be considered employees of USER solely for the purposes of ownership of intellectual property in accordance with Attachment D.

#### **ARTICLE 7: EXPORT CONTROLS**

USER is responsible for and acknowledges that its export of goods or Technical Information may require some form of export license from the U.S. Government and that failure to obtain such export license may result in criminal liability under the laws of the United States.

#### **ARTICLE 8: PUBLICATIONS**

USER and CONTRACTOR will provide each other copies of articles of publication of information generated pursuant to this Agreement for review and comment at least two (2) calendar weeks prior to intended publication.

USER will not use the name of the Idaho National Laboratory, CONTRACTOR, or the U.S. 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 U.S. Government and CONTRACTOR. See Appendix D – Intellectual Property Provisions for other terms and conditions that may be applicable.

#### **ARTICLE 9: ADMINISTRATION OF THE AGREEMENT**

This Agreement is entered into by CONTRACTOR under the authority of its PRIME CONTRACT with DOE. CONTRACTOR will administer this Agreement in all respects in accordance with the PRIME CONTRACT. Administration of this Agreement may be transferred from CONTRACTOR to DOE or its designee with notice of such transfer to USER, and CONTRACTOR will have no further responsibilities except as set forth in Article 16 of this Agreement.

#### **ARTICLE 10: DISPUTES**

The PARTIES will attempt to jointly resolve all disputes arising from this Agreement. If the PARTIES are unable to jointly resolve a dispute within a reasonable period of time, the dispute will be decided by the DOE Contracting Officer. After the Contracting Officer's decision is made, the PARTIES may, upon mutual written agreement, request that the dispute be addressed by arbitration in accordance with the then current and applicable rules of the American Arbitration Association. Judgment upon the decision rendered by the Arbitrator(s) shall be nonbinding on the PARTIES, and any costs incurred in conducting the arbitration shall be divided equally between the PARTIES.

#### **ARTICLE 11: CONFLICT OF TERMS**

Subject to the terms of CONTRACTOR'S PRIME CONTRACT with DOE taking precedence to this Agreement, this Agreement constitutes the primary document which governs the work described in the SOW. In the event of any conflict between the terms of this Agreement and any other document executed, issued, or relied upon by the PARTIES, the terms of this Agreement will prevail.

## **ARTICLE 12: INDEMNITY AND LIABILITY**

- A. **Personnel Relationships** – USER shall be responsible for the acts or omissions of its employees and agents and of all other persons that USER allows to participate in the activities under this Agreement.
- B. **Product Liability** – To the extent not prohibited by applicable law, and except for any liability resulting from the negligence or willful misconduct of CONTRACTOR or the U.S. Government, the USER shall indemnify and hold harmless BEA, the U.S. Government, and others acting on their behalf from any and all liability including damages, costs, attorney's fees, and expenses, arising from injury or death of persons or other living things or injury to or destruction of property that occurs as a result of all work performed under this Agreement, including the making, using, or selling of a product, process, or service by or on behalf of the USER, its assignees, or licensees resulting from the research, experimentation, work, and activities performed hereunder.
- C. **General Liability** – To the extent not prohibited by applicable law, and except for any liability resulting from the negligence or willful misconduct of CONTRACTOR or U.S. Government, the USER shall indemnify and hold harmless the CONTRACTOR, the U.S. Government, and others acting on their behalf, from any and all liability including damages, costs, attorney's fees, and expenses arising from injury or death of persons or other living things or injury to or destruction of property that occurs as a result of all work performed under this Agreement, including the research, experimentation, work, activities, intellectual property, information, data, or products made, developed, or provided under this Agreement by any person including the USER.
- D. **Intellectual Property Liability** – See Clause I of Appendix D – Intellectual Property Provisions.
- E. **General Disclaimer** – Except to the extent of their negligence or willful misconduct, neither the U.S. Government, the CONTRACTOR, nor persons acting on their behalf will be responsible for any injury to or death of persons or other living things or damage to or destruction of property or for any other loss, damage, or injury of any kind whatsoever resulting from the research, experimentation, work, and activities or furnishings of materials hereunder, unless provided otherwise by applicable law.
- THE U.S. GOVERNMENT AND CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH, EXPERIMENTATION, WORK, OR ACTIVITIES OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION OR DATA, OR PRODUCT OR SERVICE 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 OR USEFUL FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. NEITHER THE U.S. GOVERNMENT NOR CONTRACTOR SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH, EXPERIMENTATION, WORK, ACTIVITIES, OR ANY RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION OR DATA, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.
- F. **Funding Representation** – USER represents that, if the funding it brings to this Agreement has been secured through other agreements, such other agreements do not have any terms or conditions (including intellectual property) that conflict with the terms or conditions of this Agreement.
- G. **Waiver of Immunity** – To the extent not prohibited by applicable law and only to the extent necessary to effectuate any indemnity provisions of this Agreement, the USER hereby waives any immunity it may have under any applicable worker compensation law or other law.

## **ARTICLE 13: APPLICABLE LAW**

To the extent not prohibited by applicable law, this Agreement will be governed and construed under the laws of the State of Idaho without regard to its conflict of laws provisions. Where required by law or the PRIME CONTRACT between CONTRACTOR and DOE, issues arising under this Agreement, including issues

associated with environmental protection, safety, health, and security, will be governed by and construed under the laws of the United States. To the extent not prohibited by applicable law, any lawsuits relating to this Agreement will be brought in a state or federal court of competent jurisdiction located within the state of Idaho:

#### **ARTICLE 14: ENTIRE AGREEMENT**

It is expressly acknowledged by the PARTIES that this Agreement constitutes the entire and only contract between the PARTIES with respect to the SOW to be conducted at the FACILITY; that there are no other agreements, understandings or covenants between the PARTIES of any kind, nature or description, express or implied, oral or otherwise which have not been referenced in this Agreement and that this Agreement cannot be modified, altered, amended or changed, nor any provision thereof waived or abrogated, except by an instrument in writing and executed on behalf of each of the PARTIES by a duly authorized representative of each PARTY who has been expressly authorized in writing to execute such an instrument.

### ARTICLE 15: TERM & TERMINATION

This Agreement will become effective when fully executed by the PARTIES and will remain in effect until \_\_\_\_\_ unless expressly earlier terminated by at least one PARTY or extended by written amendment by the PARTIES. Either PARTY may terminate this Agreement for any reason at any time by giving not less than one (1) calendar month prior written notice to the other PARTY. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature, including but not limited to Articles 10, 11, 12, and 13, will survive and extend beyond termination and shall remain in full force and effect until fulfilled.

(USER's Formal Name)

By \_\_\_\_\_  
(Signature)

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Mailing Address:

BATTELLE ENERGY ALLIANCE, LLC:

By \_\_\_\_\_  
(Signature)

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Mailing Address:

**APPENDIX A**  
**USER RESEARCH PROPOSAL**

**APPENDIX B**  
**STATEMENT OF WORK**



**APPENDIX C**  
**ATR USER FACILITY COST WORKSHEET**

## **APPENDIX D**

### **INTELLECTUAL PROPERTY CLAUSES**

**USE ONLY DOE APPROVED  
NON-PROPRIETARY OR PROPRIETARY VERSION  
OF APPENDIX D AS APPROPRIATE**

## APPENDIX D

### INTELLECTUAL PROPERTY CLAUSES (NON-PROPRIETARY VERSION)

Issued by DOE \_\_\_\_\_, 2008

#### **CLAUSE I. INTELLECTUAL PROPERTY INDEMNITY-LIMITED**

USER shall, to the extent not prohibited by applicable law, fully indemnify the U.S. Government and CONTRACTOR and their officers, managers, agents, and employees for all liabilities, including damages, costs and attorney fees, for infringement of any United States patent, copyright, or other intellectual property rights arising out of research, experimentation, work, or any acts required or directed by USER to be performed under the Agreement to the extent such are not normally performed at the FACILITY. The foregoing indemnity shall not apply unless USER shall have been informed as soon as practicable by CONTRACTOR or the U.S. Government of the suit or action alleging such infringement, and such indemnity shall not apply to a claimed infringement that is settled without the consent of USER unless required by a court of competent jurisdiction.

#### **CLAUSE II. INVENTION RIGHTS**

##### **A. Definitions**

1. USER means the person or entity with which the Agreement is made in which these Patent and Technical Data Clauses pertain.
2. CONTRACTOR means the "M&O Contractor," i.e., the Management and Operating Contractor, which manages and operates the Government-owned, contractor-operated facility where the work under this Agreement is to be performed.
3. "Subject Invention" means any invention or discovery conceived or first actually reduced to practice under this Agreement and which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.)
4. "USER Subject Invention" means any Subject Invention of USER, conceived or first actually reduced to practice under this Agreement.
5. "CONTRACTOR Subject Invention" means any Subject Invention of CONTRACTOR, conceived or first actually reduced to practice under this Agreement.
6. "DOE Patent Counsel" means the DOE Counsel for Intellectual Property assisting the DOE Contracting activity.
7. "FACILITY" means the Idaho National Laboratory Advanced Test Reactor and associated facilities, equipment, services, information, and other associated material.
8. "SOW" means the Statement of Work mutually agreed to by the Contractor and User in which research is to be conducted under this Agreement.

##### **B. Subject Inventions**

CONTRACTOR and USER agree to disclose to each other each and every Subject Invention, which may be patentable or otherwise protectable.

##### **C. CONTRACTOR's Rights**

Except as provided below in the case of Joint Inventions, any invention or discovery that CONTRACTOR may make or conceive under this Agreement will be governed by the provisions of CONTRACTOR'S Prime Contract for operation of the FACILITY.

##### **D. USER's Rights**

Subject to the provisions herein, USER may elect title to any USER Subject Invention and in any resulting patent secured by USER. Where appropriate, the filing of patent applications by USER is subject to DOE security regulations and requirements. If the USER does not elect to retain title to a USER Subject Invention, the CONTRACTOR may elect title in that invention.

**E. Joint Inventions**

For Subject Inventions conceived or first actually reduced to practice under this Agreement that are joint Subject Inventions made by CONTRACTOR and USER, each Party shall have the option to elect and retain title to its undivided rights in such joint Subject Inventions. Where both Parties elect to retain title to their undivided rights in such joint Subject Inventions, title shall be jointly owned by CONTRACTOR and USER. If a Party elects not to retain title to its undivided rights in any such joint Subject Invention, then the other Party shall have the option to elect to retain title to the non-electing Party's undivided rights.

**F. Rights of Government**

1. USER agrees to timely assign to the Government the entire right, title, and interest in any country to each USER Subject Invention where USER:
  - a. Does not elect, and the CONTRACTOR does not elect, pursuant to this Appendix D, to retain such rights; or
  - b. Fails to timely have a patent application filed in that country on the USER Subject Invention; or
  - c. Decides not to continue prosecution or not to pay the maintenance fees covering the Invention; or
  - d. At any time, no longer desires to retain title.
2. USER shall provide the Government a copy of any application filed on a USER Subject Invention promptly after such application is filed, including its serial number and filing date.
3. USER agrees to submit on request periodic reports to DOE no more frequently than annually on the utilization of a USER Subject Invention or on efforts to obtain such utilization that are being made by USER or its licensees or assignees.
4. USER hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the USER Subject Invention throughout the world.
5. USER acknowledges that the DOE has certain March-in Rights to any USER Subject Inventions elected by the USER in accordance with 48 C.F.R. 27.304-1(g) and that the USER is subject to the requirements with respect to preference for U.S. industry pursuant to 35 U.S.C. § 204 to any USER Subject Inventions elected by the USER.
6. Facilities License: USER agrees to and does hereby grant to the Government a nonexclusive, nontransferable, irrevocable, paid-up license in and to any inventions or discoveries, regardless of when conceived or actually reduced to practice or acquired by USER, which 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 licenses with the transfer of that 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. Invention Report and Election**

1. USER shall furnish the DOE Patent Counsel a written report containing full and complete technical information concerning each USER Subject Invention within six (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 publication of such Subject Invention known to USER. The report shall identify the contract 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 USER Subject Invention pertains a clear understanding of the nature, purpose, operation, and to

the extent known, the physical, chemical, biological, or electrical characteristics of the Invention. If USER wishes to elect title to the Subject Invention, such report shall contain USER's notice of election of title.

2. When a Subject Invention is reported under this paragraph G, it shall be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 U.S.C. § 5908.

#### **H. Limitation of Rights**

Nothing contained in this patent rights clause shall be deemed to give the U.S. Government any rights with respect to any invention other than a USER Subject Invention and except as set forth in the facilities license of Paragraph F.

### **CLAUSE III. RIGHTS IN TECHNICAL INFORMATION**

#### **A. Definitions:**

1. "Technical Information" means recorded information or data regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work to be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software databases, and computer software documentation). Technical Information as used herein does not include financial reports, costs analyses, and other information incidental to Agreement administration.
2. "Proprietary Information" means Technical Information which embody trade secrets developed at private expense outside of this Agreement, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:
  - a. Are not generally known or available from other sources without obligation concerning their confidentiality;
  - b. Have not been made available by the owner to others without obligation concerning their confidentiality;
  - c. Are not already available to the CONTRACTOR or the Government without obligation concerning their confidentiality; and
  - d. Are marked as "Proprietary Data."
3. "Unlimited Rights" means right to use, disclose, reproduce, prepare derivative works, distribute and perform publically and display publically, Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.
4. "Contracting Officer" means the DOE entity having contract authority over CONTRACTOR and the Facility Operator.

#### **B. Allocation of Rights**

1. The U.S. Government shall have Unlimited Rights in Technical Information first produced or specifically used in the performance of the Agreement except as otherwise provided in the Agreement.
2. USER shall have the right to use for its private purposes, subject to patent, security or other provisions of this Agreement, Technical Information it first produces in the performance of this Agreement provided the Deliverables of this Agreement have been met as of the date of the private use of such Technical Information, and Technical Information first produced by CONTRACTOR under the SOW, if any, under this Agreement. USER agrees that to the extent it receives or is given access to Proprietary Information or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, USER shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written

approval of the Contracting Officer.

**C. Deliverables**

USER agrees to furnish to DOE or CONTRACTOR information and data, if any, which are (a) specified to be delivered in the SOW, (b) essential to the performance of work by DOE or CONTRACTOR or subcontractor personnel or (c) necessary for the health and safety of such personnel in the performance of the work or the protection of the environment. Any information or data furnished to DOE or CONTRACTOR shall be deemed to have been delivered with unlimited rights unless marked as "Proprietary Information" of USER.

Upon completion or termination of the project, USER agrees to deliver to DOE and CONTRACTOR a nonproprietary report describing the work performed under this Agreement.

**D. Legal Notice**

The following legal notice shall be affixed to each report or publication resulting from this Agreement which may be distributed by USER:

DISCLAIMER NOTICE This document was prepared by (Institution name of USER) as a result of the use of facilities at the Idaho National Laboratory of the U.S. Department of Energy (DOE), which is managed and operated by Battelle Energy Alliance, LLC, acting under Contract No. DE-AC07-05ID14517. Neither Battelle Energy Alliance, LLC, DOE, or the U.S. Government, nor any person acting on their behalf: (a) make any warranty or representation, express or implied, with respect to the information contained in this document; or (b) assume any liabilities with respect to the use of, or damages resulting from the use of any information contained in the document.

**E. Copyrighted Material**

1. USER agrees to, and does hereby grant to the U.S. Government, and to its officers, agents, servants, contractors, and employees acting within the scope of their duties:
  - a. A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others so to do, all copyrightable material first produced or composed in the performance of this Agreement by USER, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and
  - b. A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by USER in the performance of the Agreement but which are incorporated in the material furnished or delivered under the Agreement, provided that such license shall be only to the extent USER now has, or prior to completion or final settlement of the Agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.
2. USER agrees that it will not knowingly include any third party copyrightable material furnished or delivered under this Agreement without a license as provided for in subparagraph 1(b) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted materials.

**F. Early Termination of Agreement**

The terms and conditions of this Appendix D shall survive the Agreement in the event that the Agreement is terminated before completion of the SOW.

**G. Non Disclosure of Proprietary Information**

1. Proprietary Information will, to the extent permitted by law, be maintained in confidence and disclosed or used by CONTRACTOR (under suitable protective conditions) only for the purpose of carrying out CONTRACTOR's responsibilities under the Agreement. Upon completion of work or activities under the Agreement, such Proprietary Information will be disposed of as requested by USER. Before CONTRACTOR releases information associated with the Agreement to anyone,

USER will be afforded the opportunity to review that information to ascertain whether it is Proprietary Information and to mark it as such.

2. Each Party agrees to not disclose Proprietary Information provided by the other Party under the Agreement to anyone other than the providing Party without the written approval of the providing Party, except to U.S. Government employees who are subject to 18 U.S.C. § 1905, even after termination (see Article 16 of this Agreement). The U.S. Government and CONTRACTOR shall have the right, at reasonable times up to three (3) years after the termination or completion of the Agreement, to inspect any information designated as Proprietary Information. The USER is solely responsible for the removal of all of its Proprietary Information from the FACILITY by or before termination of the Agreement. The U.S. Government and CONTRACTOR shall have Unlimited Rights in any information which is not removed from the FACILITY by termination of the Agreement. The U.S. Government and CONTRACTOR shall have Unlimited Rights in any Proprietary Information which is incorporated into the FACILITY or equipment under the Agreement to such extent that the FACILITY or equipment is not restored to the condition existing prior to such incorporation.

*Note: Contractor may delete the clauses pertaining to Proprietary Information if the Contractor decides to prohibit the USER from bringing Proprietary Information into the User Facility. In such cases, the Contractor may substitute the following for Section G:*

**G. No Proprietary Information to be Disclosed to Contractor (Alternate G)**

The USER shall not bring Proprietary Information into the FACILITY except at USER's own risk. Any such information, regardless how it is marked, shall be deemed Technical Information and shall be treated according to Clause III hereof.

**Clause IV. NOTICE AND ASSISTANCE REGARDING PATENT OR COPYRIGHT INFRINGEMENT**

- A. USER shall report to U.S. Government or CONTRACTOR, promptly and in reasonable written detail, each notice or claim of infringement of patents or copyrights based on or arising out of the performance of the Agreement of which the USER has knowledge.
- B. In the event of any claim or suit against U.S. Government or CONTRACTOR on account of any alleged patent or copyright infringement arising out of the performance of the Agreement or out of the use of any equipment or supplies furnished or work or services performed under the Agreement, USER shall furnish to U.S. Government or CONTRACTOR, all evidence and information in possession of USER pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the U.S. Government except where USER has agreed to indemnify the U.S. Government or CONTRACTOR.

**The standard terms and conditions of these INTELLECTUAL PROPERTY CLAUSES (Non-Proprietary) of the User Facility Agreement for the INL ATR has been reviewed and approved by DOE. No change to this Appendix D may be made without DOE approval.**