

LAWRENCE BERKELEY NATIONAL (LBNL) LABORATORY

FUNDS-IN MEMORANDUM AGREEMENT

(work performed by LBNL for the Campus)

Between the University of California, \_\_\_\_\_ Campus

and the Lawrence Berkeley National Laboratory

This Memorandum Agreement (hereinafter called Agreement) is entered into by and between the University of California, [name of campus] (hereinafter called ["Campus" **or** "OP"]) and the Lawrence Berkeley National Laboratory (hereinafter called Laboratory) both of which are governed by The Regents of the University of California for [a portion of the work originally awarded to Campus from prime Sponsor and agreement number **or** name of OP program **or** services].

The Regents of the University of California manage and operate the Laboratory for the U.S. Department of Energy and are obligated to comply with the terms and conditions of its Prime Contract No. DE-AC02-05CH11231 with the United States Government (hereinafter called "Government") represented by the United States Department of Energy (hereinafter called "Department" or "DOE") when providing goods, services, products, processes, materials, or information to the Campus under this Agreement.

The Parties mutually agree to the following terms and conditions:

I. SCOPE OF WORK

The research [**or** service] to be provided under this Agreement shall be in accordance with the Scope of Work and the Laboratory proposal entitled "\_\_\_\_\_", dated \_\_\_\_\_, incorporated herein by reference [**or** in accordance with the attached Exhibit A]. The Scope of Work may be modified by mutual agreement of the Parties to this Agreement.

II. PERIOD OF PERFORMANCE

This Agreement will be effective as of the latter date of (1) the date on which it is signed by the last of the Parties hereto, or (2) the date on which it is approved by DOE, if required, or (3) the receipt of the advance payment. Laboratory shall inform Campus of actual start date of Work. The end date shall be \_\_\_\_\_ [**or** \_\_\_\_\_ months after the effective date of this Agreement.]

Except as necessary to comply with any reporting and close-out procedures, Laboratory shall discontinue performance of work on the end date cited above unless Campus extends the period of performance by written notice to Laboratory, as agreed upon by both parties in accordance with Article VI, Amendments.

### III. AMOUNT OF AWARD

A. Campus will reimburse Laboratory for actual work performed under this Agreement up to \$\_\_\_\_\_.  
. Campus has currently obligated \$\_\_\_\_\_ as the maximum amount to be reimbursed to Laboratory.

B. No costs incurred prior to the start date of this Agreement as stated above in Article II are authorized.

C. Laboratory shall not incur costs and Campus shall not be obligated to make any payments under the Agreement in excess of the amount obligated in the absence of a written modification or notice from Campus authorized Contract Officer named in Article IX.

### IV. FISCAL AND ADMINISTRATIVE STANDARDS

Allowable costs and administration shall be governed by standards set forth in Laboratory DOE Prime Contract No. \_\_\_\_\_ between the DOE and The Regents of University of California, this Agreement, and the \_\_\_\_\_ (prime Sponsor or OP program name and guidelines), in that order of precedence.

### V. INVOICING AND PAYMENT

A. The Campus shall provide sufficient funds in advance to reimburse the Laboratory for costs to be incurred in performance of the Scope of Work in this Agreement and the Laboratory shall have no obligation to performance of the Scope of Work in the absence of adequate advance funds. If the estimated period of performance exceeds 90 (ninety) days or the estimated cost exceeds \$25,000, the Campus may, with Laboratory's approval, advance funds incrementally. In such a case, the Laboratory will initially invoice the Campus an amount sufficient to permit the work to proceed to 90 days and thereafter, invoice the Campus monthly so as to maintain approximately a 90-day period that is funded in advance. Payment will be made directly to the Laboratory. Upon termination or completion, any excess funds will be refunded by the Laboratory to the Campus.

B. Advance payment invoices and monthly invoices shall be prepared in accordance with Laboratory's standard practices.

C. Laboratory shall submit monthly invoices stating actual expenditures to

(Name of Campus Principal Investigator **or** Campus Extramural Funds Office and appropriate address.)

D. Advance payment shall be made by check to The Regents of the University of California, include the remittance invoice number, and be mailed to the address indicated on the invoice.

E. Laboratory shall provide Campus with an invoice marked "Final Invoice," within sixty (60) days of the project end date or within sixty (60) days of the termination date, whichever comes first, notifying Campus that no further invoices and charges are forthcoming. Laboratory shall return any unused advanced funds.

## VI. AMENDMENTS

All amendments or modifications to this Agreement shall be in writing signed by the authorized Contracts Officers in Article IX and shall be by mutual consent of the Parties.

## VII. PROGRESS AND FINAL TECHNICAL REPORTS

*[Following clause is not applicable to Agreements for leases or services.]*

Laboratory shall furnish Campus technical progress reports as required by the Campus Principal Investigator and set forth in the Scope of Work. A final technical report shall be submitted to Campus within sixty (60) days of the project end date or within sixty (60) days of the termination date, whichever comes first. Reports are to be submitted to:

(Name and address of Campus Principal Investigator )

## VIII. TERMINATION

This Agreement may be terminated without cause by either party upon 30 days prior written notice to the other Party. Campus shall reimburse Laboratory for noncancellable obligations and allowable costs (including closeout costs) incurred to the effective date of termination.

## IX. AUTHORIZED PERSONNEL

The following individuals are authorized to negotiate, modify, or terminate this Agreement:

(Laboratory Contract Officer)

(Campus Contract Officer)

The following individuals are authorized within the Scope of Work to provide technical direction or request supporting services for the Campus:

(Campus Principal Investigator)

Laboratory work shall be conducted by:

(Name of Laboratory Principal Investigator or person in charge of Work).

## X. TITLE TO PROPERTY

Equipment is defined as non-expendable, tangible, personal property which has an acquisition cost of \$5,000 or more, is free-standing, and has a normal life expectancy of one year or more. Title to purchased equipment shall remain with The Regents of the University of California. All property under the \$5,000 threshold shall vest with the Government unless otherwise provided here below. *[If the*

*campus wants title to property under \$5000 purchased with funds under this Agreement, the specific items need to be named here.]*

## XI. GENERAL PROVISIONS

The document "Work for UC Campuses by UC National Laboratories General Provisions," dated \_\_\_\_\_, is incorporated herein by reference and is modified by the following:.

[Guidance: When it is determined that the Campus is providing material or equipment, or sending its employees to the Laboratory as part of the Scope of Work, or where the Campus has directed that specific activities not normally performed by the Laboratory be performed as part to of the Scope of Work, Article 4 "General Indemnity" shall apply to the project.]

General Provision Article 4, "General Indemnity": \_\_\_\_\_ is \_\_\_\_\_ is not applicable.

## XII. SPECIAL PROVISIONS

*[Any required special provisions not provided in the prime Sponsor's award cited in Article IV or special provisions required due to special arrangements between the Laboratory and UC Program are added here. Such provisions may include Publication Acknowledgments; Budget Restrictions; Rebudgeting Direct/Indirect Costs language; final withhold; additional intellectual property; Final Financial, Patent, Equipment, or Other Close-Out Reports etc. **or** None.]*

## XIII. ACKNOWLEDGMENT

The Parties to this Memorandum Agreement hereby acknowledge concurrence with the Scope of Work and other administrative matters herein.

AUTHORIZED: University of California, \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ACCEPTED: \_\_\_\_\_ National Laboratory

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT E(ref.) 4/07

## **WORK FOR UC CAMPUSES BY UC NATIONAL LABORATORIES**

### **GENERAL PROVISIONS – April 2007**

**These General Provisions are for projects and services provided by the UC National Laboratories to UC Campuses under a Memorandum Agreement.**

#### **1. GOVERNING TERMS AND CONDITIONS**

It is understood by the Parties that the Laboratory, on behalf of the Regents of the University of California (hereinafter called the "Regents") 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 Campus under this Agreement. It is also understood by the Parties that the Campus, on behalf of the Regents, is obligated to comply with the terms and conditions of its external funding agreement(if any) that is providing the funds for this transaction. The Parties will be responsible for resolving any inconsistencies between the prime Sponsor agreement and Laboratory's M&O contract, and consult with DOE as needed, prior to taking any action which would violate either Party's governing agreement.

#### **2. LEGAL NOTICE**

The Parties agree that the following legal notice shall be affixed to each report furnished to the Campus under this Agreement and to any report resulting from this Agreement which may be distributed by the Campus:

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 of The Regents of the University of California and shall not be used for advertising or product endorsement purposes.

#### **3. DISCLAIMER**

**THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED**

INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS 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. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS WORK FOR OTHERS AGREEMENT.

#### **4. GENERAL INDEMNITY**

To the extent permitted by California law, the Regents agree to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the Campus, 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 Campus, and not directly resulting from the fault or negligence of the Government, the Department, the Laboratory or persons acting on their behalf.

#### **5. PRODUCT LIABILITY INDEMNITY**

To the extent permitted by California law, the Regents agrees to indemnify the Government 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 Regents, its assignees, or licensees, which was derived from the work performed under this Agreement. In respect to this Article, the Government shall not be considered an assignee or licensee of the Regents, as a result of reserved Government rights. The indemnity set forth in this paragraph shall apply only if the Regents shall have been informed as soon and as completely as practical by 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 Government shall have provided all reasonably available information and reasonable assistance requested by the Regents. No settlement for which the Regents would be responsible shall be made without the Regent's consent unless required by final decree of a court of competent jurisdiction.

#### **6. INTELLECTUAL PROPERTY INDEMNITY - LIMITED**

To the extent permitted by California law, the Regents shall indemnify the Government and its 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 Campus 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 Campus unless required by a court of competent jurisdiction.

## **7. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

The Campus and the Laboratory, shall report promptly and in reasonable written detail to each other, each claim of patent or copyright infringement based on the performance of this Agreement of which any party has knowledge. The Laboratory shall report this to the Department and shall furnish to the Department, when requested by the Department, all evidence and information in the possession of the Campus or Laboratory pertaining to such claim.

## **8. PATENT RIGHTS**

The Regents will comply with Clause 1.97, DEAR 970.5227-10, "Patent Rights - Nonprofit Management And Operating Contracts, Nonprofit Organization or Small Business Firm Contractor" of its prime contract.

## **9. 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 U.S.C. 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 Laboratory, Campus and the Government will have Unlimited Rights in all Generated Information, except for information that is disclosed in a Subject Invention disclosure being considered for patent protection.

C. The Government and Laboratory agree not to disclose properly marked Proprietary Information provided by the Campus without written approval of the Campus, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 U.S.C. 1905).

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

## **10. 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 Campus, and the Laboratory shall have no further responsibilities except for the confidentiality, use, and/or non-disclosure obligations of this Agreement.

## **11. SIMILAR OR IDENTICAL SERVICES**

The Government and/or Laboratory shall have the right to perform similar or identical services in the Scope of Work (SOW) for other sponsors as long as the Campus's Proprietary Information is not utilized.

## **12. EXPORT CONTROL**

Each Party is responsible for its own compliance with laws and regulations governing export control.