

42 U.S.C 7278

CONTRIBUTED FUNDS AGREEMENT No. AGMT-XXXX

**U.S. DEPARTMENT OF ENERGY (hereinafter “DOE”)
NATIONAL ENERGY TECHNOLOGY LABORATORY (hereinafter “NETL”)**

FACE PAGES

1. Name of Sponsor: Participant name
2. Agreement Number: AGMT-XXXX
3. Project Title and Description: Title and brief description
4. Performance Period: Length of time needed to complete work, e.g., one year
5. Financial:
 - a. Estimated Cost: \$Cost of Project
 - b. Incremental Funding Approved: Yes/No/N/A
 - c. Amount Due Upon Execution: \$List the monetary amount due right after signing of agreement
6. NETL Technical Contact:

Name
Department of Energy
626 Cochran Mill Road, Pittsburgh, PA 15236
1450 SW Queen Ave, Albany, OR 97321
Tel: XXX
Email: XXX
7. NETL Administrative Contact:

Name
Department of Energy
626 Cochran Mill Road, Pittsburgh, PA 15236
1450 SW Queen Ave, Albany, OR 97321
Tel: XXX
Email: XXX
8. Location of Work:

626 Cochran Mill Road, Pittsburgh, PA 15236
1450 SW Queen Ave, Albany, OR 97321
9. Sponsor Program Director:

Name
Mailing Address
Tel: XXX
Email: XXX

10. Issuing Agency: DOE/NETL

11. Agreement Terms and Conditions: This agreement consists of Face Pages plus the following:

- a. Appendix A: General Terms and Conditions
- b. Appendix B: Patents and Technical Data Clauses
- c. Appendix C: Statement of Work (and payment schedule, if applicable)
- d. Appendix D: Alternations and Deletions (if applicable)
- e. Appendix E: Reserved.

12. Sponsor Type: [Choose one, delete instruction and other options] State Government, Local Government, Commercial Firm, Educational Institution, Non-Domestic Entity, Other

13. Sponsor Acceptance:

Name of Signatory:

Date Signed

14. DOE/NETL Acceptance:

Sean I. Plasynski, Ph.D., Director, NETL

Date Signed

Appendix A

General Terms and Conditions

- 1. TERM.** The term of this Agreement shall commence upon the date on which it is signed by the last of the parties and continue for the performance period stated on the face page, Section 4. Performance of work under this Agreement may be terminated at any time by either party, without liability except as provided hereinafter upon giving 30 days written notice to the other party. DOE shall terminate this Agreement only when such termination is in the best interest of the Government provided that DOE shall have the right to terminate if the Sponsor fails to advance the funds required by Paragraph 3 below within 90 days of the DOE's execution of this Agreement. In the event of termination, the Sponsor shall be responsible for DOE's 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 Paragraph 2 below.
- 2. COSTING.** The total cost to the Sponsor for DOE's performance of work under this Agreement shall not, without the Sponsor's prior consent, exceed the estimated cost set forth in Section 5 of the face page; provided however that DOE shall have no obligation to continue or complete performance of the work if the actual cost of such performance will exceed said estimated cost; and provided further, that said estimated cost shall not operate as a cost limitation of the obligations and liabilities assumed by the Sponsor under other provisions of this Agreement. DOE will provide notice as soon as reasonably practicable if the actual cost to complete performance will exceed the estimated cost so as to allow the Sponsor the opportunity to provide additional funding without an interruption in the performance of the work.
- 3. FUNDING AND PAYMENT.** The Sponsor shall provide sufficient funds in advance to reimburse DOE for costs incurred by DOE in performing the work described in this Agreement, and DOE shall have no obligation to perform in the absence of adequate advance funds. DOE will submit an invoice to the Sponsor for advance funding in the amount of the estimated cost of the work unless incremental funding is permitted. If the estimated period of performance exceeds 60 days and the estimated cost exceeds \$25,000, the Sponsor may, with the DOE's consent, advance funds incrementally. In such a case, DOE will initially invoice the Sponsor in an amount sufficient to permit the work to proceed for 60 days and thereafter invoice the Sponsor monthly so as to maintain a 60-day period that is funded in advance. Payment shall be made directly to DOE via electronic check, credit card, ACH, or wire, and the Sponsor shall include reference to AGMT-XXXX with payment. Payment options will be provided by DOE with each invoice to the Sponsor. Upon termination or completion of this Agreement, any excess funds shall be refunded by DOE to the Sponsor.
- 4. SOURCE OF FUNDS.** The Sponsor hereby warrants and represents that, if the funding it brings to this Agreement was 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.
- 5. PROPERTY.** Unless the parties hereto otherwise agree, all equipment and test apparatus procured with funds provided by the Sponsor shall be disposed of as directed by the Sponsor. Failure of the Sponsor to remove its property from federal property will establish a presumption of abandonment under the federal property regulations.
- 6. PUBLICATION MATTERS.** No publicity release (including news releases and advertising) relating to this Agreement or the work hereunder shall be issued by the Sponsor without prior coordination with DOE.

Regarding any technical paper, article, publication or announcement of advances generated in connection with work done under this Agreement during the period of performance of the Agreement or in the future, the publishing party shall provide the other party a 30-day period in which to review and comment on proposed publications. The publishing party shall not publish or otherwise disclose Proprietary Information (as defined in Appendix B) provided by the other party, except as provided by law.

7. **GENERAL DISCLAIMER AND LIMITATION OF LIABILITY.** Neither the Government nor DOE (or persons acting on their behalf) makes any warranty, express or implied (i) with respect to the accuracy, completeness or usefulness of any information or data to be furnished hereunder; (ii) that the use of any such information or data may not infringe privately owned rights; (iii) that services, information or data to be furnished hereunder will not result in injury or damage when used for any purpose; and (iv) that services, information or data to be furnished hereunder will accomplish intended results or are safe for any purpose. THE GOVERNMENT HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATED TO SERVICES, INFORMATION OR DATA FURNISHED HEREUNDER.

Neither the Government nor DOE (or persons acting on their behalf) will be responsible to the Sponsor for any injury to or death of person, for damage to or destruction of property, or for any kind of harm whatsoever to Sponsor resulting from the performance of services or furnishing of materials hereunder. IN NO EVENT WILL THE GOVERNMENT OR DOE (OR ANY PERSON ACTING ON THEIR BEHALF) BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

8. **INDEMNITY.** The Sponsor agrees to indemnify and hold harmless the Government, DOE, and persons acting on their behalf from (1) all liability, including costs and expenses incurred, resulting from the Sponsor's use or disclosure of any information in whatever form, furnished hereunder; and (2) all liability to any person or entity including the Sponsor, for injury to or death of persons or other living things or injury to or destruction of property arising out of performance by the Government, DOE, or persons acting on their behalf, and not directly resulting from the fault or negligence of the Government, DOE, 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.

Except for any liability resulting from any negligent acts or omissions of the Government, the Sponsor agrees to indemnify and hold the Government harmless 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.

9. **NONINTERFERENCE.** The use of a DOE facility and its employees in support of this Agreement can only be authorized on a noninterference basis, i.e., the work performed under this Agreement shall not interfere with work related to the prime mission of the facility. Although DOE's commitment to this effort is equal to its commitment to mission programs, DOE may, for reasons related to national security or exigency, preempt effort in support of this Agreement. Accordingly, neither the Government, nor DOE (or persons acting on their behalf) will be responsible, irrespective of cause, for failure to perform services or furnish information or data hereunder at any particular time or in any specific manner.
10. **REPORTING REQUIREMENTS.** Reports on the work shall be submitted to the Sponsor as described in Appendix C.
11. **PATENT AND TECHNICAL DATA.** Terms and conditions regarding patents and technical data matters are set forth in Appendix B.

12. **COORDINATION.** Technical coordination will be between the Sponsor and the DOE contact identified in Section 6 of the face page. Administrative coordination will be between the Sponsor and the DOE contact identified in Section 7.
13. **ALTERATIONS AND ADDITIONS.** Alterations and additions, if any, as agreed to by the Parties prior to execution of this Agreement are attached hereto and incorporated herein. Any agreement to materially alter any terms or conditions of this Agreement after its execution by the Parties shall be valid only if made in writing and executed by the parties.
14. **ASSIGNMENT.** Neither this Agreement nor any interest or claim hereunder shall be assigned or transferred by either Party, except as authorized in writing by the other Party to this Agreement.
15. **SIMILAR OR IDENTICAL SERVICES.** DOE shall have the right to perform similar or identical services in the Statement of Work for other third parties as long as the Sponsor's Proprietary Information is not used.

MODEL

Appendix B

Patents and Technical Data Clauses

Clause I - Definitions

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321et seq.).

"Subject Invention" means any invention conceived or first actually reduced to practice in the performance of work under this Agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Agreement.

"Generated Information" means information produced in the performance of this Agreement.

"Government" means the United States of America and agencies thereof.

"Proprietary Information" means information developed at private expense that embodies (i) trade secrets or (ii) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)) and is marked as Proprietary Information.

"Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works distributed to the public, and perform publicly or display publicly in any manner or for any purpose, or to permit others to do so.

Clause II - Intellectual Property Indemnity - Limited

The Sponsor 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 Sponsor to be performed under the Agreement to the extent such acts are not normally performed at the facility. Such indemnity shall not apply to a claimed infringement which is settled without the consent of the Sponsor unless required by a court of competent jurisdiction.

Clause III- Notice and Assistance Regarding Patent and Copyright Infringement

The Sponsor shall report to the DOE NETL 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 DOE NETL, when requested by the DOE NETL, all evidence and information in the possession of the Sponsor pertaining to such claim.

Clause IV - Rights in Generated Information

Generated Information may be designated as Proprietary Information, with the Government retaining explicit use rights

The Sponsor and the Government shall have Unlimited Rights in all Generated Information produced or provided under this Agreement, except for information marked by the Sponsor as being copyrighted or Proprietary Information. Generated Information in which the Government has Unlimited Rights which is disclosed in a Subject Invention disclosure form will be protected from public disclosure for a reasonable time in order to allow for filing a patent application.

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 a third party. All such Proprietary Information will, to the extent permitted by law, be maintained as confidential. Upon completion of activities under this Agreement such designated Proprietary Information will be provided to the Sponsor. Notwithstanding the foregoing, DOE retains a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works and use any such designated Proprietary Information, by or on behalf of the Government, as necessary for Government purposes while keeping such designated Proprietary Information as confidential. The Government shall have Unlimited Rights in Proprietary Information that a) becomes publicly known without the fault of DOE, b) comes into DOE's possession from a source other than Sponsor without restriction and without breach by DOE of any of the obligations set forth herein, c) can be demonstrated by DOE by written record that the Generated Information was known prior to its generation under this Agreement, d) is independently developed by DOE employees who did not have access to the Generated Information under this Agreement, or e) is publicly disclosed by the Sponsor or authorized for public disclosure by the Sponsor in writing.

Upon completion of activities under this Agreement, Proprietary Information will be disposed of as requested by the Sponsor, except that DOE shall retain one copy of any Proprietary Information solely for record keeping purposes. The Parties acknowledge that Proprietary Information that is communicated in electronic or other computer retrievable form may be routinely backed-up for archival purposes such that return or destruction would not be practical and/or feasible, in which case DOE will use reasonable efforts to keep copies of the Proprietary Information on such system back-up media secure until such time as the back-up media is recycled or destroyed. Before DOE 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.

Clause V - Proprietary Information Provided by the Sponsor

DOE agrees to not disclose Proprietary Information provided by the Sponsor to anyone other than the Sponsor without the written permission of the Sponsor, except to Government employees who are subject to 18 U.S.C. 1905, or to employees of DOE contractors who have agreed to keep the Proprietary Information confidential, and whose access to the Proprietary Information is necessary for performing work under this Agreement. The obligations relating to the disclosure of Proprietary Information shall end if any such information a) becomes publicly known without the fault of DOE, b) comes into DOE's possession from a source other than Sponsor without restriction and without breach by DOE of any of the obligations set forth herein, c) can be demonstrated by DOE by written record that it was known prior to its disclosure under this Agreement, d) is independently developed by DOE employees who did not have access to the information under this Agreement, or e) is publicly authorized for disclosure by the Sponsor or authorized for public disclosure by Sponsor in writing.

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 Sponsor may request DOE to return or destroy all Proprietary

Information unless otherwise provided for in Clause IV. The Government shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement, except for any copy retained by DOE under Clause IV or otherwise provided for in Clause IV. The Government 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.

Clause VI - Rights in Subject Inventions

The Statement of Work for this CFA contemplates DOE performing non-R&D service work for the Sponsor (e.g. testing or consulting services) and therefore no Subject Inventions, either solely or jointly developed by either party, are anticipated to occur under this Agreement. Notwithstanding the foregoing, disposition of rights in Subject Inventions shall be consistent with Section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908.

DOE shall retain title to all Subject Inventions solely developed by DOE.

Pursuant to 42 U.S.C. 5908, in the event that DOE informs the Sponsor that DOE elects to retain title to a Subject Invention made jointly by a Sponsor employee and a DOE employee, the Sponsor agrees to assign to DOE or to obtain such assignment of the right, title, and interest Sponsor has in and to such joint Subject Invention.

Pursuant to 42 U.S.C. 5908, in the event that DOE informs the Sponsor that DOE elects to retain title to a Subject Invention solely by a Sponsor employee, the Sponsor may petition DOE for title of such solely developed Subject Invention consistent with the considerations and procedures set out in 10 CFR 784.

Appendix C

Statement of Work

[Insert SOW]

[List monetary amounts and milestones due if cost is over \$25k *and* incremental funding has been approved]

MODEL

Appendix D

Reserved.

MODEL

Appendix E

Reserved.

MODEL