

**U. S. DEPARTMENT OF ENERGY
WORK FOR OTHERS AGREEMENT WITH NON-FEDERAL SPONSORS**

WORK FOR OTHERS AGREEMENT NO. _____

BETWEEN

THE AMES LABORATORY, Iowa State University, herein called the "Laboratory", acting under Prime Contract No. DE-AC02-07CH11358, with the United States Government (called the "Government"), represented by the United States Department of Energy (called the "Department" or "DOE") has been selected by (*INSERT HERE THE NAME OF THE NON FEDERAL SPONSOR*) (called the "Sponsor") to perform the work set forth in the Statement of Work, attached hereto as Appendix A as mentioned in Article I of this Agreement.

The obligations of the above-identified DOE Laboratory shall apply to any successor in interest to said Laboratory continuing the operation of the DOE facility involved in this Work for Other Agreement.

LIST OF ARTICLES

ARTICLE I	PARTIES TO THE AGREEMENT
ARTICLE II	TERM OF THE AGREEMENT
ARTICLE III	COSTS
ARTICLE IV	FUNDING AND PAYMENT
ARTICLE V	SOURCE OF FUNDS
ARTICLE VI	PROPERTY
ARTICLE VII	PUBLICATION MATTERS
ARTICLE VIII	LEGAL NOTICE
ARTICLE IX	DISCLAIMER
ARTICLE X	GENERAL INDEMNITY
ARTICLE XI	PRODUCT LIABILITY INDEMNITY
ARTICLE XII	INTELLECTUAL PROPERTY INDEMNITY - LIMITED
ARTICLE XIII	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
ARTICLE XIV	PATENT RIGHTS
ARTICLE XV	RIGHTS IN TECHNICAL DATA - USE OF FACILITY
ARTICLE XVI	ASSIGNMENT
ARTICLE XVII	SIMILAR OR IDENTICAL SERVICES
ARTICLE XVIII	EXPORT CONTROL
ARTICLE XIX	TERMINATION
ARTICLE XX	APPLICABLE LAW

GENERAL TERMS AND CONDITIONS

ARTICLE I. PARTIES TO THE AGREEMENT

THE AMES LABORATORY, Iowa State University, hereinafter referred to as the “Laboratory”, operating under Prime Contract No. DE-AC02-07CH11358, with the U. S. DEPARTMENT OF ENERGY, has been requested by *(insert here the name of the non Federal Sponsor)*, hereinafter referred to as the “Sponsor”, to perform on a best effort basis, the work as set forth in the Statement of Work, attached hereto as Appendix A to this Work for Other (WFO) Agreement No._____. It is understood by the Parties that, except for the intellectual property provisions of this Agreement, the Laboratory is obligated to comply with the terms and conditions of its Agreement 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 Laboratory estimated period of performance for completion of the Statement of Work is X (X) months. The term of this Agreement shall be X months from the latter date latter date on which it is signed by the last of the Parties thereto, or the advanced funds have been received and recorded in the Laboratory’s Contract.

ARTICLE III. COSTS

- A. The Laboratory estimated cost for the work to be performed under this Agreement is \$_____.
- B. 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.
- C. The Laboratory agrees to provide at least 30 days' notice to the Sponsor if the actual cost to complete performance will exceed its estimated cost.

ARTICLE IV. FUNDING AND PAYMENT

The Sponsor shall provide sufficient funds in advance to reimburse the Laboratory for costs to be incurred in performance of the work described in this Agreement, and the Laboratory shall have no obligation to perform in the absence of adequate advance funds. If the estimated period of performance exceeds 120 days or the estimated cost exceeds \$25,000, the Sponsor may, with the Laboratory’s approval, advance funds incrementally. In such a case, the Laboratory will initially invoice the sponsor in an amount sufficient to permit the work to proceed for 120 days and thereafter invoice the sponsor monthly so as to maintain approximately a 120 day period that is

funded in advance. Payment shall be made directly to the Laboratory. Upon termination or completion, any excess funds shall be refunded by the Laboratory to the Sponsor. The Sponsor shall pay the Laboratory the following advance payment and monthly invoice payments:

- A. Advance Payment. The Sponsor shall advance the following amount prior to commencement of work:

<u>Amount Due</u>	<u>Date Due</u>
\$ _____	00/00/00

Sufficient advance funds shall be obtained to maintain approximately a 120-day advance of funds during the entire period of work covered by the funds provided by the Sponsor under the Work for Others Agreement. Advance payment shall be recorded in the Laboratory’s account until the last four (4) months of the Agreement term at which time it shall be liquidated by charging costs incurred during that period to the advance payment account. In the event that the advance payment is insufficient due to accelerated work on the project or late payments from the Sponsor, additional advance funds will be invoiced by the Laboratory. Advance payment in excess of total costs incurred by the Laboratory under this Agreement shall be refunded to the Sponsor.

- B. Monthly Invoice Payments. 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.
- C. Applicable Currency. All payments due the Laboratory under this Agreement, including cost estimates and obligations of funds, shall be in United States dollars (U.S.\$).
- D. Address for Payments: Accounting Office
Ames Laboratory
224 TASF
Ames, IA 50011-3020

Payment by Electronic Fund Transfer directly to Laboratory’s bank is preferred. Electronic Fund Transfer should be routed as follows:

ABA# 0073000642
 Bankers Trust Company, N.A.
 453 7th Street
 Des Moines, IA 50309
 Account Name: Iowa State University Ames Laboratory, DOE
 Account No.: Contact Ellen Price at price@ameslab.gov

- E. Address for Invoices:

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 or is being secured through existing international agreements, such other agreements do not have any terms and conditions (including intellectual property) that conflict with the terms of this Agreement. If the Work for Others Agreement entered into conflicts with existing International Agreements, the International Agreement terms and conditions will take precedence.

ARTICLE VI. PROPERTY

Unless the parties otherwise agree in writing, each piece of equipment having a value in excess of \$5,000 produced or acquired with funds provided by the Sponsor shall be disposed of as instructed by the Sponsor, and any and all costs associated with the disposal of such property shall be at the Sponsor's expense. Any piece of equipment produced or acquired under \$5,000 shall become property of the Laboratory on behalf of 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 1.A. of Article XV. The publishing party will provide to the other Party for its review, a copy of the proposed publication 60 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 Disclaimer 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 MATERIAL WAS PREPARED AS AN ACCOUNT OF WORK SPONSORED BY *Insert Sponsor Name*. NEITHER THE AUTHORS, UNITED STATES GOVERNMENT NOR ANY AGENCY THEREOF, NOR IOWA STATE UNIVERSITY, NOR ANY OF THEIR EMPLOYEES OR OFFICERS, MAKES ANY WARRANTY, EXPRESS OR

IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR 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 HEREIN TO ANY SPECIFIC COMMERCIAL PRODUCT, PROCESS, OR SERVICE BY TRADE NAME, TRADEMARK, MANUFACTURER, OR OTHERWISE, DOES NOT NECESSARILY CONSTITUTE OR IMPLY ITS ENDORSEMENT, RECOMMENDATION, OR FAVORING BY THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF. THE VIEW AND OPINIONS OF AUTHORS EXPRESSED HEREIN DO NOT NECESSARILY STATE OR REFLECT THOSE OF THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF.

ARTICLE IX. 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 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. 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 WORK FOR OTHERS AGREEMENT.

ARTICLE X. GENERAL INDEMNITY

The Sponsor agrees to indemnify and hold harmless the Government, the Department, 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 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 Sponsor, and not directly resulting from the fault or negligence of the Government, the Department, the Laboratory, or persons acting on their behalf.

ARTICLE XI. 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 Work for Others 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 paragraph 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 XII. 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 XIII. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

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

ARTICLE XIV. PATENT RIGHTS (CLASS WAIVER DECLINED OR DENIED)

1. The following definitions shall be used for this Article.
 - A. "Subject Invention" means any invention or discovery of the Facility Contactor, or to the extent the Sponsor or a Facility subcontractor is performing any work under this Agreement, of the Sponsor or Facility subcontract to 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 Iowa State University as Operator of The Ames Laboratory, operating under DOE Prime Contract No. DE-AC02-07CH11358 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 (UNLIMITED RIGHTS/NONPROPRIETARY)

1. The following definitions shall be used for this Article.
 - A. "Facility Contractor" means Iowa State University as Operator of The Ames Laboratory, operating under DOE Prime Contract No. DE-AC02-07CH11358 or any successor contractor thereof.
 - B. "Generated Information" means information produced in the performance of this Agreement and Facility subcontracts 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 the work to be performed at the DOE/NNSA facility, 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.

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 Laboratory 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 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.
6. The Sponsor agrees that the Laboratory 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 other provisions of this Article, and to the extent copyright is asserted, the Government reserves for itself and other 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 Laboratory may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Laboratory 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 Laboratory 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

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

ARTICLE XIX. TERMINATION

Performance of work under this Agreement may be terminated at any time by either Party, without liability, except as provided above, upon giving a 30 day written notice to the other Party. The Laboratory shall terminate this Agreement only when the Laboratory determines, after direction from DOE, that such termination is in the best interest of the Government, provided however, that the Laboratory 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 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. Termination notifications to the Laboratory should be addressed to Debra Covey, 311 TASF, or e-mailed to covey@ameslab.gov.

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.

ARTICLE XX. APPLICABLE LAW

The Parties shall attempt to jointly resolve all disagreements arising from this Agreement. If the Parties are unable to jointly resolve a disagreement within a reasonable period of time after submission of the disagreement for resolution, said disagreement shall be adjudicated in a court of competent jurisdiction in the State of Iowa. To the extent that there is no applicable U. S. Federal law, this Agreement and performance thereunder shall be governed by the law of the State of Iowa.

In witness whereof, the Parties hereto have executed this Agreement.

FOR THE AMES LABORATORY - IOWA STATE UNIVERSITY:

Name: _____

Debra L. Covey

Title: Associate Laboratory Director
for Sponsored Research Administration

Date: _____

FOR SPONSOR:

Name: _____

Title: _____

Date: _____