PROPRIETARY USER AGREEMENT

The Department of Energy has opted to utilize the following agreement for Designated Proprietary User Facilities transactions. Because these transactions are widespread across Departmental facilities, uniformity in agreement terms is desirable. Except for the *** provisions, minor modifications to the terms of this agreement may be made by CONTRACTOR, but any changes to the *** provisions or substantive changes to the non *** provisions will require approval by the DOE Contracting Officer, WHICH WILL LIKELY DELAY YOUR ACCESS TO THE USER FACILITY. In instances where DOE Contracting Officer approval for substantive changes cannot be obtained, Work for Others (WFOs) and Cooperative Research and Development Agreements (CRADAs) may be more appropriate due to the increased flexibility such agreements afford. Where this agreement is to be used as an umbrella agreement for multiple transactions it may be modified to reflect such usage.

Proprietary User Agreement

No.

BETWEEN

LOS ALAMOS NATIONAL SECURITY, LLC (hereinafter "CONTRACTOR"), Operator of Los Alamos National Laboratory (hereinafter "Laboratory") under U.S. Department of Energy Contract No. DE-AC52-06NA25396

AND

[Insert USER's legal name] (hereinafter "USER"), [insert identifying information]

(Individually a "Party," Collectively "the Parties")

The obligations of the CONTRACTOR may be transferred and shall apply to any successor in interest to said CONTRACTOR continuing the operation of the DOE facility involved in this Proprietary User Agreement.

ARTICLE I. FACILITIES AND SCOPE OF WORK

Employee(s), consultant(s), and representative(s) of USER (hereinafter called "Participant(s)") shall be permitted to use Laboratory facilities for the purpose of performing the experiment(s) accepted and approved for performance at Laboratory. This Proprietary User Agreement shall be incorporated by reference and apply to all such experiments authorized for performance at Laboratory facilities which are totally funded by USER. CONTRACTOR will retain its employees assigned to this work on its payroll and will be reimbursed by USER for the account of DOE in accordance with DOE's pricing policy, which provides for full cost recovery.

For purposes of this Agreement, "User Facility" means one of the following facilities located within the Los Alamos Neutron Science Center (LANSCE):

- ☐ The Lujan Neutron Scattering Center
- ☐ The Weapons Neutron Research Facility
- ☐ The Proton Radiography Facility

Scope of Work: [Attach proposal provided to the User Facility managers or insert an abstract of the proposal.]

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of _____months/years from the effective date. The term of this Agreement shall be effective as of the latter date of (1) the date on which it is signed by the last of the Parties, or (2) the receipt of any advance payment required under Article III.

ARTICLE III. BILLING AND PAYMENT OF EXPENSES

A. The estimated cost of the work, described in Article I above is $_____.

Full cost recovery rates are established at the beginning of each fiscal year and are subject to revision to reflect changing costs factors during the fiscal year. The minimum unit of charge at the Facility is $_____ per 8 hour shift.

B. USER shall pay CONTRACTOR the following advance payment:

Advance Payment. USER shall advance the following amount at the time shown:

Amount Due	Date Due
$_____.__	00/00/00

This is a full advance for the estimated cost.

All advance payments must be made in US dollars. Work shall commence only after CONTRACTOR receives the Advance Payment and this Proprietary User Agreement has been fully executed by the Parties. For foreign wire transfers, please add $30 to the invoice amount to cover payment charges levied by USER's banking institution.

Monthly Expense Statements.

If the estimated cost is increased during the project or the project is expected to be renewed, an additional advance may be requested of USER. CONTRACTOR is not obligated to continue the work unless it is holding an adequate advance.

Upon completion of the project there will be a reconciliation of the total costs incurred to total payments received. Excess funds will

be refunded to the USER in accordance with the CONTRACTOR'S closeout procedures.

Expense statements shall be sent to:

USER Reference No. if applicable:

Contact Name:

Street Address:

City, State, Zip Code:

Country:

Telephone with area code:

Email:

Tax ID Number (TIN):

C. Costs of Experiments will be in accordance with DOE Order O 522.1, "Pricing of Departmental Materials and Services.

ARTICLE IV: ADMISSION REQUIREMENTS

USERs and Participants are 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 User Facility, including safety, operating and health-physics procedures, environment protection, access to information, hours of work, and conduct. Participants shall execute any and all documents required by CONTRACTOR acknowledging and agreeing to comply with such applicable rules of CONTRACTOR. Participants will not be considered employees of CONTRACTOR for any purpose.

ARTICLE V. PROPERTY AND MATERIALS***

USER may be permitted by the Contractor to furnish equipment, tooling, test apparatus, or materials necessary to assist in the performance of its experiment(s) at the User Facility. Such items shall remain the property of USER. Unless the Parties otherwise agree, all such property furnished by USER or equipment and test apparatus provided by USER will be removed by USER within sixty (60) days of termination or expiration of this Agreement or will be disposed of as directed by USER at User's expense. Any equipment that becomes integrated into the User Facility shall be the property of the Government. USER acknowledges that any material supplied by USER may be damaged, consumed or lost. Materials (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in

their then condition by USER at USER's expense. USER will return User Facility and equipment utilized in their original condition except for normal wear and tear.

CONTRACTOR shall have no responsibility for USER's property at the User Facility other than loss or damage caused by willful misconduct or gross negligence of CONTRACTOR or its employees.

Personal property produced or acquired during the course of this Agreement shall be disposed of as directed by the owner at the owner's expense.

ARTICLE VI: SCHEDULING***

USER understands that CONTRACTOR will have sole responsibility and discretion for allocating and scheduling usage of the User Facility and equipment needed for or involved under this Agreement.

ARTICLE VII: INDEMNITY AND LIABILITY***

A. Personnel Relationships - USER shall be responsible for the acts or omissions of Participants.

B. Product Liability - To the extent permitted by US and US State law, if USER utilizes the work derived from this Agreement in the making, using, or selling of a product, process or service, then USER hereby agrees to hold harmless and indemnify CONTRACTOR and the United States Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of such utilization of the work by or on behalf of USER, its assignees or licensees.

C. General Indemnity - To the extent permitted by US and US State law, USER hereby agrees to indemnify and hold harmless CONTRACTOR and the United States Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, arising out of the performance of this Agreement or arising out of the use of the services performed, materials supplied or information given hereunder by any persons including the USER, and not directly resulting from the fault or negligence of the Contractor or the United States Government, or persons acting on their behalf.

D. Patent and Copyright Indemnity—Limited - To the extent permitted by US and US State law, USER shall fully indemnify the Government and CONTRACTOR and their officers, agents, and employees for infringement of any United States patent or copyright arising out of any acts required or directed or performed by USER under the Agreement to the extent such acts are not normally performed at the facility.

E. The liability and indemnity provisions in paragraphs B, C and D above shall not apply unless USER shall have been informed as soon as practicable by CONTRACTOR or the Government of the suit or action alleging such liability or infringement, and such

indemnity shall not apply to a claimed liability or infringement that is settled without the consent of USER unless required by a court of competent jurisdiction.

F. General Disclaimer -

THE GOVERNMENT AND CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE USER FACILITY FURNISHED HEREUNDER. IN ADDITION, THE GOVERNMENT, CONTRACTOR AND USER MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT, CONTRACTOR AND/OR USER SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO USE OF SUCH FACILITIES, RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

G. Notice and Assistance Regarding Patent and Copyright Infringement

a. USER shall report to the Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which USER has knowledge.
b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, USER shall furnish to the Government when requested by the Government, 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 Government except where USER has agreed to indemnify the Government.

ARTICLE VIII. PATENT RIGHTS***

A. Definitions

1. "Subject Invention" means any invention or discovery of USER conceived or first actually reduced to practice in the course of or under this Agreement.
2. "Patent Counsel" means the DOE Patent Counsel assisting the Facility Operator.

B. Rights of USER – Election to Retain Rights

With respect to any USER Subject Invention, which includes inventions of any Participants, reported and elected in accordance with paragraph (C) of this clause, USER may elect to obtain the entire right, title and interest in any patent application filed in any country on a Subject Invention and in any resulting patent secured by USER. Where appropriate, the filing of patent application by USER is subject to DOE security regulations and requirements.

C. Invention Identification, Disclosures, and Reports

USER shall furnish the Patent Counsel a written report concerning each USER Subject Invention, which includes inventions of any Participants, within six months after conception or first actual reduction to practice, whichever occurs first. If USER wishes to elect title to the Subject Invention, a notice of election to the Subject Invention should be submitted with the report or within one year of such date of reporting of the Subject Invention.

D. Facilities License

USER agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any inventions or discoveries, regardless of when conceived or actually reduced to practice or acquired by USER, which at any time through completion of this Agreement are owned or controlled by USER and are incorporated in the User Facility as a result of this Agreement to such an extent that the User 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 user Facility, and (2) to transfer such licenses with the transfer of that User 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

ARTICLE IX. RIGHTS IN TECHNICAL DATA***

A. Definitions

1. "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to Agreement administration.

2. "Proprietary Data" means technical data which embody trade secrets, developed at private expense, 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 Government without obligation concerning their confidentiality, and

d. are marked as “Proprietary Data.”.

3. "Unlimited Rights" means rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

B. USER agrees to furnish to DOE or CONTRACTOR those data, if any, which are (1) essential to the performance of work by DOE or CONTRACTOR personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any data furnished to DOE or CONTRACTOR shall be deemed to have been delivered with unlimited rights unless marked as "Proprietary Data" of USER.

C. USER agrees that it shall have the sole responsibility for identifying and marking all documents containing Proprietary Data which are furnished by USER or produced under this Agreement. USER further agrees to mark each such document by or before termination of the Agreement by placing on the cover page thereof a legend identifying the document as Proprietary Data of USER and identifying each page and portion thereof to which the marking applies. The Government and CONTRACTOR shall not disclose properly marked Proprietary Data of USER outside the Government and CONTRACTOR. The Government and CONTRACTOR reserve the right to challenge the proprietary nature of any markings on data.

D. USER is solely responsible for the removal of all of its Proprietary Data from the facility by or before termination of this Agreement. The Government shall have unlimited rights in any Technical Data (including Proprietary Data) which are not removed from the facility by or before termination of the Agreement. The Government shall have unlimited rights in any Technical Data (including Proprietary Data) which are incorporated into the User Facility under the Agreement to such extent that the User Facility or equipment is not restored to the condition existing prior to such incorporation.

E. Upon completion or termination of the project, USER agrees to deliver to DOE and CONTRACTOR a non-proprietary report describing the work performed under the Agreement.

ARTICLE X. LABORATORY SITE ACCESS, SAFETY AND HEALTH ***

As a precondition to using CONTRACTOR User Facilities, Participants must complete all CONTRACTOR Site Access documents and requirements. USER and Participants shall take all reasonable precautions in activities carried out under this Agreement to protect the safety and health of others and to protect the environment. Participants must comply with all applicable safety, health, access to information, security and environmental regulations and the requirements of the Department and CONTRACTOR, including the specific requirements of the User Facility covered by this Agreement. In the event that USER or Participant fails to comply with said regulations and requirements, CONTRACTOR may, without prejudice to any other legal or contractual rights, issue and order stopping all or any part of USER's or Participant's activities at the User Facility.

ARTICLE XI. PERSONNEL RELATIONSHIPS ***

Participants will remain employees or representatives of USER at all times during their participation in the work under this Agreement, and shall not be considered employees of CONTRACTOR or DOE for any purpose. Participants shall be subject to the administrative and technical supervision and control of CONTRACTOR during and in connection with the Participants' activities under this Agreement.

ARTICLE XII: EXPORT CONTROLS***

USER will comply with all U.S. export control laws and regulations. This includes the U.S. Export Administration Regulations (15 CFR 730-774), the U.S. Department of Energy's export regulations (10 CFR 810), and the International Traffic in Arms Regulations (22 CFR 120-130). USER acknowledges that the work authorized to be performed at the facility is not specifically designed or modified for items contained in the U.S. Munitions List (22 U.S. Code of Federal Regulations, Part 121) which includes, but is not limited to, weapons, delivery systems, explosives, military vehicles, military aircraft, guidance systems, military electronics, chemical or biological agents, and spacecraft/satellite systems. Licenses may be required before such work takes place.

ARTICLE XIII. THIRD-PARTY CONTRACTS

Contracts between USER and third parties for work on CONTRACTOR premises including, but not limited to, construction, installation, maintenance, and repair, will be subject to prior approval by the Department and CONTRACTOR. The Department and CONTRACTOR may require the insertion of specific terms and conditions into such contracts.

ARTICLE XIV: DISPUTES ***

The parties will attempt to jointly resolve all disputes arising under this agreement. If the parties are unable to jointly resolve a dispute within a reasonable period of time, either party may contact the laboratory's Technology Transfer Ombudsman (TTO) to provide assistance. The TTO may work directly to resolve the dispute or, upon mutual agreement of the parties, contact a third party neutral mediator to assist the parties in coming to a resolution. The costs of the mediator's services will be shared equally by the parties. In the event that an agreement is not

reached with the aid of the ombudsman or mediator, the parties may agree to have the dispute addressed by neutral evaluation. The decision rendered by the neutral evaluator shall be nonbinding on the parties, and any costs incurred there from shall be divided equally between the parties. Upon mutual agreement, the parties may request a final decision by the DOE Contracting Officer. Absent resolution, either party may seek relief in a court of competent jurisdiction.

ARTICLE XV. CONFLICT OF TERMS***

In the event of any conflict between the terms of this document and any other document issued by either Party, the terms of this document shall prevail.

ARTICLE XVI. TERMINATION***

Either Party may terminate this Agreement for any reason at any time by giving not less than thirty (30) days prior written notice to the other Party, provided that CONTRACTOR shall recover payment for the costs incurred by CONTRACTOR on behalf of USER prior to termination and for termination costs.

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

FOR THE CONTRACTOR:

BY: _____

David R. Pesiri, Division Leader
Technology Transfer Division

DATE: _____

FOR THE USER:

BY: _____

Name: _____

Title: _____

DATE: _____

ADDRESS:

TELEPHONE: