

This model Strategic Partnership Project agreement may be used to negotiate and develop SPP agreements with non-federal parties, also referred to as sponsors, which applies to the majority of engagements with institutions in public, private, and non-profit sectors.

(Insert title of project here)

Strategic Partnership Project Agreement No. _____

Between

Fermi Research Alliance, LLC
Operator of Fermi National Accelerator Laboratory
Operating Under Prime Contract No. DE-AC02-07CH11359
for the U.S. Department of Energy

And

(Insert name of the non-Federal Sponsor here)

The obligations of the above-identified DOE Contractor shall apply to any successor in interest to said Contractor continuing the operation of the DOE facility involved in this Strategic Partnership Project Agreement.

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GENERAL TERMS AND CONDITIONS

ARTICLE I. PARTIES TO THE AGREEMENT

The U.S. Department of Energy Contractor, Fermi Research Alliance, LLC, hereinafter referred to as the " Contractor," has been requested by (insert here the name of the non-Federal Sponsor), hereinafter referred to as the "Sponsor," collectively referred to as the "Parties," to use best efforts to perform the work set forth in the Statement of Work, attached hereto as Appendix A. It is understood by the Parties that, the Contractor is obligated to comply with the terms and conditions of its Facility Prime 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, materials, or information to the non-Federal Sponsor under this Agreement.

ARTICLE II. TERM OF THE AGREEMENT

The Contractor's estimated period of performance for completion of the Statement of Work is _____ months/years from the effective date. The effective date of this Agreement shall be the date on which it is signed by the last of the Parties or receipt of funds whichever occurs last.

ARTICLE III. COSTS

- A. The Contractor estimated cost for the work to be performed under this Agreement is \$_____.
- B. The Contractor has no obligation to continue or complete performance of the work at a cost in excess of the original estimated cost or any subsequent amendment(s).
- C. The Contractor agrees to provide at least _____ 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 Contractor for costs to be incurred in performance of the work described in this Agreement, and the Contractor shall have no obligation to perform in the absence of adequate advance funds. The Sponsor shall provide to the Contractor, prior to any work being performed, an advance payment sufficient to cover anticipated work that will be performed for the

first billing cycle. In addition, the Sponsor shall provide 60 days of additional funding to ensure that funds remain available for work during subsequent billing cycles. Payment shall be made directly to the Contractor who will then notify the Department of Energy as appropriate. Upon termination or completion, any excess funds shall be refunded by the Contractor to the Sponsor.

ARTICLE V. SOURCE OF FUNDS

The Sponsor hereby represents that, if the funding it brings to this Agreement has been secured through other agreements, those other agreements do not have any terms and conditions (including intellectual property terms and conditions) that conflict with the terms and conditions of this Agreement.

ARTICLE VI. TANGIBLE PERSONAL PROPERTY

Upon termination of this Agreement, tangible personal property or equipment produced or acquired in conducting the work under this Agreement shall be owned by the Sponsor. Tangible personal 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 of Energy property or equipment. Costs incurred for disposition of property shall be the responsibility of the Sponsor and included in costs allocated in Article III or paid separately by the Sponsor.

ARTICLE VII. PUBLICATION MATTERS

The publishing Party shall provide the other Party a ___day period in which to review and comment on proposed publications that disclose any of the following generated in the course of the Agreement: technical developments, research findings, or identify Proprietary Information (as defined in paragraph 1.B of Article XV). The publishing Party shall not publish or otherwise disclose Proprietary Information identified by the other Party, except as mandated by law. The Sponsor will not use the name of Contractor or the United States 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 Government and Contractor.

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 report was prepared as an account of work undertaken at Fermi National Accelerator Laboratory, a U.S. Government sponsored laboratory and may contain research results which are experimental in nature. Neither the United States Government nor any agency thereof, nor Fermi Research Alliance, LLC, nor any of their employees, makes any warranty, expressed 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 herein to any specific commercial product, process, or service by 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 Fermi Research Alliance, LLC. 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 by Fermi Research Alliance, LLC, and shall not be used for advertising or product endorsement purposes.”

ARTICLE IX. DISCLAIMER

THE GOVERNMENT AND THE CONTRACTOR 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 STRATEGIC PARTNERSHIP PROJECT 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 CONTRACTOR 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 STRATEGIC PARTNERSHIP PROJECT AGREEMENT.

ARTICLE X. GENERAL INDEMNITY

Except for any loss, liability, or claim resulting from any willful misconduct or negligent acts or omissions of the Government, the Contractor, or persons acting on their behalf ("Indemnified Parties"), the Sponsor agrees to indemnify and hold harmless the Indemnified Parties against any loss, liability, or claim, including all damages, costs, and expenses, including attorney's fees, directly relating to:

1. 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 Indemnified Parties; or
2. use of the services performed, materials supplied, or information given under the Agreement by any person including the Sponsor or Contractor.

ARTICLE XI. PRODUCT LIABILITY INDEMNITY

Except for any loss, liability, or claim resulting from any willful misconduct or negligent acts or omissions of the Government, the Contractor, or persons acting on their behalf ("Indemnified Parties"), the Sponsor agrees to hold harmless and indemnify the Indemnified Parties against any losses, liabilities, and claims, including 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.

For purposes of this Article, neither the Government nor the Contractor shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Contractor rights. This Article shall apply only if the Sponsor was:

1. informed as soon and as completely as practical by the appropriate Indemnified Party of the allegation or claim;
2. afforded, to the maximum extent by applicable laws, rules, or regulations, an opportunity to participate in and control its defense; and
3. given 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 a court of competent jurisdiction.

For licensees granted or assignments made by Sponsor to any third party in technology derived from the work performed under this Agreement, such licenses shall include the requirement that the third party shall agree to the provisions above.

ARTICLE XII. INTELLECTUAL PROPERTY INDEMNITY - LIMITED

The Sponsor shall indemnify and hold harmless the Government, the Contractor, and persons acting on their behalf ("Indemnified Parties") against any losses, liabilities, and claims, including all damages, costs, and expenses, including attorney's fees, for infringement of any United States patent, copyright, trade secret, or other intellectual property right if 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 claim or allegation of 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

Each Party shall report to the other Party, promptly and in reasonable written detail, each claim or allegation of infringement of any patent, copyright, trade secret, or other intellectual property right based on the performance of this Agreement of which a Party has knowledge. In the event of any claim or suit against a Party based on such alleged infringement, the other Parties shall furnish to the Party, when requested by the Party, all evidence and information in the possession of the other Party pertaining to such suit or claim.

ARTICLE XIV. PATENT RIGHTS

(STRUCTURE OF THIS CLAUSE IS DETERMINED ON A CASE-BY-CASE BASIS)

ARTICLE XV. RIGHTS IN TECHNICAL DATA

1. The following definitions shall be used.

- A. "Generated Information" means information produced in the performance of this Agreement or any Facility subcontract under this Agreement.
 - B. "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)).
 - C. "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.
 - D. "Computer Software" means (i) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
2. For work performed at the DOE Facility, the Sponsor agrees to furnish to the Contractor or leave at the facility that information, if any, which is (1) essential to the performance of work by the Contractor personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Contractor 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 provided containing Proprietary Information.
 3. The Sponsor, 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 Contractor 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 U.S.C. 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 Sponsor may request the Contractor to return or destroy all of the Sponsor's Proprietary Information subject to paragraph (2) above. The Government and

Contractor shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement. The Government and Contractor 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 Contractor will provide to the Department of Energy a nonproprietary description of the work performed under this Agreement.
7. COPYRIGHT: The Parties may assert Copyright in any of their Generated Information. Subject to the other provisions of this clause including Computer Software generated by the Contractor below, and to the extent copyright is asserted, the Government reserves for itself and others 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.

For Computer Software generated by the Contractor under this agreement, the Contractor grants to the Sponsor a royalty-free, nontransferable, non-exclusive, irrevocable worldwide copyright license for its own use. When the Contractor asserts copyright in its Computer Software developed under this Agreement, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government (narrow-license). After the Contractor abandons or no longer commercializes the Copyrighted Computer Software, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government (broad-license).

A separate copyright license may be necessary in Contractor Computer Software developed outside of this Agreement and used to perform the work in this Agreement, such as creating derivative works.

8. 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 AND NOTIFICATION

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, however, the Contractor may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Contractor shall have no

further responsibilities except for the confidentiality, use, and/or non-disclosure obligations of this Agreement.

If the Sponsor intends to assign or transfer any interest in this Agreement to a third party or the Sponsor is merging or being acquired by a third party, the Sponsor shall notify the Contractor with details of the pending action for a determination. The Contractor shall reply in writing whether such transfer is acceptable or invoke the termination clause.

ARTICLE XVII. SIMILAR OR IDENTICAL SERVICES

The Government and/or Contractor shall have the right to perform similar or identical services in the 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: DISPUTES

The Parties shall attempt to jointly resolve all disputes arising from this Agreement. In the event a dispute arises under this Agreement, the Sponsor is encouraged to contact Contractor's Technology Partnerships Ombudsman in order to resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to jointly resolve a dispute within 60 days, the Parties agree to submit the dispute to a third-party mediation process that is mutually agreed upon by the Parties.

Option for International: After the Parties have consulted with the Technology Partnership Ombudsman in accordance with the paragraph above and have mutually agreed not to enter into mediation, the Parties can request to have the dispute settled by an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

ARTICLE XX. ENTIRE AGREEMENT AND MODIFICATIONS

1. This Agreement with its appendices contains the entire agreement between the Parties with respect to the subject matter hereof, and all prior representations or agreements relating hereto have been merged into this document and are thus superseded in totality by this Agreement.
2. Any agreement to materially change any terms or conditions of this Agreement or the appendices shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.

ARTICLE XXI. TERMINATION

This Agreement may be terminated by either Party following _ days written notice to the other Party. If Article IV provides for advance funding, this Agreement may also be terminated by the Contractor in the event of failure by the Sponsor to provide the necessary advance funding. In the event of termination either by the Sponsor or by the Contractor (e.g., for lack of advance funding), the Sponsor shall be responsible for the Contractor's costs (including closeout costs), but in no event shall the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Article III, above.

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.

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

FOR Contractor:

Name _____

Title _____

Date _____

FOR Sponsor:

Name _____

Title _____

Date _____

SAMPLE

APPENDIX A: STATEMENT OF WORK

[To be developed by the Fermilab Principal Investigator (PI) working with PI(s) for the Partner institution(s). Statement of Work should be developed, reviewed, and approved in accordance with the requirements of the Fermilab PI's home organization (e.g., AD, PPD, etc.) prior to submission to the Office of Partnership and Technology Transfer.]

SAMPLE