

*This model Strategic Partnership Project agreement may be used to negotiate and develop SPP agreements with federal parties and a small business, which are funded by Department of Energy SBIR/STTR Funding Agreements, for the performance of research, experimental, or developmental work.*

**(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.

**LIST OF ARTICLES**

**ARTICLE I. PARTIES TO THE AGREEMENT ..... 4**

**ARTICLE II. TERM OF THE AGREEMENT..... 4**

**ARTICLE III. COSTS ..... 4**

**ARTICLE IV. FUNDING AND PAYMENT..... 4**

**ARTICLE V. SOURCE OF FUNDS [RESERVED]..... 5**

**ARTICLE VI. TANGIBLE PERSONAL PROPERTY..... 5**

**ARTICLE VII. PUBLICATION MATTERS..... 5**

**ARTICLE VIII. LEGAL NOTICE..... 5**

**ARTICLE IX. DISCLAIMER ..... 6**

**ARTICLE X. GENERAL INDEMNITY [RESERVED] ..... 7**

**ARTICLE XI. PRODUCT LIABILITY INDEMNITY ..... 7**

**ARTICLE XII. INTELLECTUAL PROPERTY INDEMNITY – LIMITED [RESERVED].... 7**

**ARTICLE XIII. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT ..... 7**

**ARTICLE XIV. PATENT RIGHTS (CLASS WAIVER INAPPLICABLE) ..... 8**

**ARTICLE XV. RIGHTS IN TECHNICAL DATA (UNLIMITED RIGHTS/NONPROPRIETARY AND SBIR/STTR PROTECTED DATA) ..... 8**

**ARTICLE XVI. ASSIGNMENT AND NOTIFICATION ..... 9**

**ARTICLE XVII. SIMILAR OR IDENTICAL SERVICES..... 10**

**ARTICLE XVIII. EXPORT CONTROL..... 10**

**ARTICLE XIX. DISPUTES ..... 10**

**ARTICLE XX. ENTIRE AGREEMENT AND MODIFICATIONS..... 10**

**ARTICLE XXI. TERMINATION ..... 11**

**APPENDIX A: STATEMENT OF WORK..... 13**

SAMPLE

## **ARTICLE I. PARTIES TO THE AGREEMENT**

The Parties to this Agreement are Fermi Research Alliance, LLC, ("Facility Contractor") as operator of Fermi National Accelerator Laboratory, operating under Prime Contract No. DE-AC02-07CH11359 (the "Prime Contract") for the U. S. DEPARTMENT OF ENERGY ("DOE" or "Department") and \_\_\_\_\_ ("Sponsor"), as contractor under its SBIR/STTR Funding Agreement No DE-\_\_\_\_\_ with the Department of Energy.

The Facility Contractor has been requested by the Sponsor to use best efforts to perform the work set forth in the Statement of Work (SOW), attached hereto as Appendix A. It is understood by the Parties that, the Facility 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. It is also understood by the Parties that, the Sponsor is obligated to comply with the terms and conditions of its Funding Agreement with the Government.

## **ARTICLE II. TERM OF THE AGREEMENT**

The Facility Contractor's estimated period of performance for completion of the SOW is \_\_\_\_\_ months/years from the effective date. The effective date of this Agreement shall be the later of (1) the date on which it is signed by the last of the Parties, (2) the date on which it is approved by DOE or (3) Receipt of funds.

## **ARTICLE III. COSTS**

1. The Facility Contractor estimated cost for the work to be performed under this Agreement is \$\_\_\_\_\_.
2. The Facility Contractor has no obligation to continue or complete performance of the work at a cost in excess of its estimated cost, including any subsequent amendment.
3. The Facility Contractor agrees to provide at least thirty (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 to the Facility Contractor, prior to any work being performed, an advance payment sufficient to cover the anticipated cost of the work that will be performed for the first 30 days of this Agreement. If the period of performance exceeds

thirty (30) days, the Sponsor shall continue to provide advance payments for thirty (30) day increments, so that the work can continue without interruption. The Sponsor may elect to provide an advance payment greater than thirty (30) days, including payment in full, if the Sponsor determines that such an arrangement is beneficial to the Sponsor for reducing transactional costs or minimizing potential delays in the project due to lack of available funding.

#### **ARTICLE V. SOURCE OF FUNDS [RESERVED]**

#### **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 thirty (30) 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 Facility Contractor shall not publish or otherwise disclose SBIR/STTR Data as described in the Sponsor's Funding Agreement, except as mandated by law or authorized by the Sponsor.

The Sponsor will not use the name of Facility 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 Facility Contractor.

#### **ARTICLE VIII. LEGAL NOTICE**

The Parties agree that the following legal 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:

### **DISCLAIMER**

This report 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, 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 Fermi Research Alliance, LLC. The United States Government reserves for itself a royalty-free, worldwide, irrevocable, non-exclusive license for Governmental purposes to publish, disclose, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such data included herein. 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 FACILITY 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 FACILITY 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 [RESERVED]**

### **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 Facility 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 Facility Contractor shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Facility 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.

### **ARTICLE XII. INTELLECTUAL PROPERTY INDEMNITY – LIMITED [RESERVED]**

### **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 (CLASS WAIVER INAPPLICABLE)**

1. Facility Contractor will follow its Facility Contract terms to report and protect its subject inventions.
2. The Sponsor will follow the terms of its Government Funding Agreement to report and protect its subject inventions.

#### **ARTICLE XV. RIGHTS IN TECHNICAL DATA (UNLIMITED RIGHTS/NONPROPRIETARY AND SBIR/STTR PROTECTED 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 U.S.C. 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.
2. For work performed at the DOE/NNSA Facility, the Sponsor agrees to furnish to the Facility Contractor or leave at the facility that information, if any, which is (1) essential to the performance of work by the Facility Contractor personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Facility 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, 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 or SBIR/STTR Data as described in the Sponsor's Funding Agreement (as authorized by the applicable Small Business Associations' Policy Directive and 15 U.S.C. 638). Therefore, upon request of the Sponsor, the Facility Contractor will mark and protect Generated Information using the following notice suitable modified.



“SBIR/STTR Protected Data – Protected from release by the Facility Contractor under SPP FRA-\_\_\_\_\_ and SBIR/STTR Award No. DE-\_\_\_\_\_”

4. The Government and Facility 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 Facility Contractor to return or destroy all of the Sponsor’s Proprietary Information subject to paragraph (2) above. The Government and Facility Contractor shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement. The Government and Facility 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 Facility Contractor will provide to the Department of Energy a nonproprietary description of the work performed under this Agreement.
7. Copyrights. The Parties may assert copyright in any of their Generated Information. Subject to the other provisions of this clause, 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.
8. The terms and conditions of this article shall survive the Agreement, in the event that the Agreement is terminated before completion of the SOW.

#### **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 Facility Contractor may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Facility

Facility 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 Facility Contractor with details of the pending action for a determination. The Facility 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 Facility 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, 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 Facility 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.

#### **ARTICLE XX. ENTIRE AGREEMENT AND MODIFICATIONS**

1. This Agreement with its annexes 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 annexes 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 thirty (30) days written notice to the other Party. If Article IV provides for advance funding, this Agreement may also be terminated by the Facility 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 Facility Contractor (e.g., for lack of advance funding), the Sponsor shall be responsible for the Facility 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