

*The Department of Energy has opted to utilize the following agreement for Designated Non-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.*

Federal

Umbrella Non-Proprietary User Agreement (FUNPUA)

FUNPUA No. **Number-01_2020**

BETWEEN

CONTRACTORS:

(Los Alamos National Laboratory (LANL))

(Sandia National Laboratories (SNL))

under the U.S. Department of Energy Contract Numbers

DE-AC52-06NA25396

89233218CNA000001

AND

("USER")

Institution Name

(Collectively, "the Parties")

The obligations of the above-identified DOE Contractor may be transferred to and shall apply to any successor in interest to said Contractor continuing the operation of the DOE Non-Proprietary User Facility involved in this User Agreement. This Agreement binds and inures to the benefit of the parties, their successors or assignees, but may not be assigned by any party without the prior written consent of the other parties, except that LANS may assign this Agreement to its successor manager and operator of Los Alamos National Laboratory or the Department of Energy, National Nuclear Security Administration. This Agreement is hereby assigned by LANS to the successor Contractor designated by the U. S. Department of Energy/National Nuclear Security Administration for the operation of Los Alamos National Laboratory, Triad National Security, LLC, effective November 1, 2018. Triad National Security, LLC may thereafter assign this Agreement without notice or consent to a successor Contractor designated by the U. S. Department of Energy/National Nuclear Security Administration for the operation of Los Alamos National Laboratory.

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR will make available to employees, consultants and representatives of USER (hereinafter called "Participants") certain Laboratory Non-Proprietary User facilities, which may include equipment, services, information and other material, with or without Laboratory scientist collaboration, for purposes as described in the Appendix which is attached to and made a part of this Agreement. Additional future Appendices referencing this Agreement may be submitted by USER for identifying facilities and purposes during the term of this Agreement (see Article II). These Appendices shall be numbered according to Contractor's usual practices. Such additional Appendices will be considered to be part of this Agreement upon acceptance by CONTRACTOR. Each Appendix shall set forth the Technical Scope of Work of a specific project, including deliverables, to be performed pursuant to this Agreement. The scope of work shall not be considered proprietary information and shall be publicly releasable. The Parties agree that an initial abstract of the work to be performed shall be a deliverable under this Agreement.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of **Five (5) years** from the effective date. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties

The term of this Agreement or any Appendix under this Agreement, may be extended by mutual, written agreement of the Parties. Any Appendix may be extended by mutual, written agreement of the Parties as long as it does not exceed the term of this Agreement.

ARTICLE III: COST

Each Party will bear its own costs and expenses associated with any Appendices undertaken pursuant to this Agreement. No money will be transferred to or from either Party as consideration, in whole or in part, for this Agreement.

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 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 any Appendix pursuant to this Agreement or will be disposed of as directed by USER at User's expense. Any equipment that becomes integrated into the 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 facilities and equipment utilized in their original condition except for normal wear and tear.

ARTICLE VI: SCHEDULING***

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

ARTICLE VII: INDEMNITY AND LIABILITY***

- A. **Personnel Relationships** - USER shall be responsible for the acts or omissions of Participants.
- B. User's responsibility for the payment of claims for the loss of property, personal injury or death, or otherwise arising out of any negligent act or omission of its employees in connection with the performance of work under this Agreement shall be governed by the Federal Torts Claims Act.
- C. **General Disclaimer** -

DOE, NNSA 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.

ARTICLE VIII: INTELLECTUAL PROPERTY PROVISIONS ***

INTELLECTUAL PROPERTY PROVISIONS User is a U. S. Government agency.

Accordingly, rights in and to patents and copyrights shall be governed by the policies and regulations pertaining to User and its employees. The Government, User, and Contractor shall have unlimited rights (as defined in 48 CFR 52.227-14) in technical data first produced in the performance of this Agreement and unlimited rights in technical data not first produced in the performance of this Agreement which is incorporated in technical

data delivered under this Agreement or which is not removed from the facility at the termination of this Agreement. The rights of the parties in patents, that may arise under this Agreement are shall be controlled by CONTRACTOR'S prime contract.

ARTICLE IX. Reserved.

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

As a precondition to using CONTRACTOR facilities, Participants must complete all CONTRACTOR Site Access documents and requirements. USER and participant 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 activities at the User Facility.

ARTICLE XI. PERSONNEL RELATIONSHIPS***

Participants will remain employees or representatives of the 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 Participant's activities under this Agreement.

ARTICLE XII: EXPORT CONTROLS***

USER acknowledges that the export of goods or Technical Data may require some form of export control license from the U.S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

ARTICLE XIII: PUBLICATIONS***

- A. USER and CONTRACTOR will provide each other copies of articles of any publication of information generated pursuant to this Agreement for review and comment 14 days prior to publication.

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***

This Agreement constitutes the primary document which governs the work described in the attached Appendices. 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. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

Remainder of page intentionally left blank.

FOR THE CONTRACTOR:

BY: _____

Jeffrey Nelson

TITLE: Center for Integrated Nanotechnologies Director

DATE: _____

BY: _____

Ross McDonald

TITLE: Center for Integrated Nanotechnologies Co-Director (acting)

DATE: _____

FOR THE USER:

***NOTE:** The person who signs this UNPUA must be legally authorized to sign this UNPUA on behalf of the institution they represent.*

BY: _____

(signature)

BY: _____

(print name)

TITLE: _____

(print title)

ADDRESS: _____

(print address)

DATE: _____

(Day/Month/Year)

GENERAL OFFICE TELEPHONE: _____

(print telephone number)

GENERAL OFFICE E-MAIL ADDRESS: _____

(print e-mail address)

Federal
Umbrella Non-Proprietary Users Agreement (FUNPUA)
Appendix A
Statement of Work (SOW)

A. PURPOSE

See attached USER Proposal. **User Proposal #XXXXXXX**

B. SCOPE

See attached USER Proposal.

Task Description(s)

Discussion: See attached USER Proposal.

Deliverables: See attached USER Proposal.

C. TECHNICAL CONTACTS

For CONTRACTORS:

CINT lead:

Phone: 505-283-2468

Fax 505-284-7778

e-mail:

For USER:

Technical Contact's name:

Institution:

e-mail: