

NON-EXCLUSIVE PATENT LICENSE AGREEMENT

This Agreement is made and entered into between Battelle Memorial Institute, herein called "BATTELLE", having a place of business in Richland, Washington, and { _____ }, herein called "LICENSEE", having a place of business in { _____ }. This Agreement is effective on the date affixed hereto by the party last signing this Agreement ("Effective Date").

WITNESSETH THAT:

WHEREAS, BATTELLE is an incorporated charitable trust exempt from federal income taxes under Section 501(c)(3) of the United States Internal Revenue Code; and

WHEREAS, BATTELLE has certain rights in patents and copyrights relating to intelligent operation of the electrical power grid (the "technology"); and

WHEREAS, LICENSEE recognizes that BATTELLE owns inventions and intellectual property useful in the conduct of LICENSEE's business; and

WHEREAS, LICENSEE recognizes that its anticipated business activity may encompass the practice of the technology that requires a license under patents owned or controlled by BATTELLE; and

WHEREAS, LICENSEE wishes to acquire the right to practice the inventions of such patents for the term of certain publicly supported work, and with the possibility of extending the term of such usage by LICENSEE.

NOW THEREFORE in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS

- A. LICENSED FIELD means { }.
- B. LICENSED PROCESS means any service or activity that utilizes, incorporates or practices one or more claims of the PATENTS.
- C. LICENSED PRODUCT means any and all products incorporating or utilizing one or more claims of the PATENTS.
- D. LICENSED SERVICES means the provision of a LICENSED PROCESS for a third party.
- E. LICENSE TERM means { }[X months from the Effective Date].
- F. LICENSED TERRITORY means the United States of America.

G. PATENT means the intellectual property described and claimed, in whole or in part, in the following patent application and the computer software implementing the methods of the PATENT:

<u>Patent Application</u>			
<u>Title</u>	<u>Country</u>	<u>Serial No.</u>	<u>Date Filed</u>
Intelligent Sensor and Controller Framework for the Power Grid (BATTELLE IPID 17008-E)*	U.S.	13/204,606	August 5, 2011

*This Patent Application arose under funding of the U.S. Government.

2. PATENT LICENSE

- A. BATTELLE hereby grants to LICENSEE, to the extent of the LICENSED TERRITORY and the LICENSED FIELD and for the LICENSE TERM, a nonexclusive, royalty-free, commercial license to make, have made, use, import and sell LICENSED PRODUCTS and LICENSED SERVICES and practice LICENSED PROCESSES.
- B. The license granted pursuant to Paragraph A hereof shall be subject to any rights the Government of The United States of America may presently have or may assert in the future for any reason including, but not limited to, those rights set forth in 35 USC §202 and §203 and 37 C.F.R. 401, *et seq.*

3. LICENSE FEE

LICENSEE shall pay BATTELLE a fee of { }.

4. U.S. MANUFACTURING

In order to enhance U.S. industrial competitiveness, LICENSEE shall ensure that LICENSED PRODUCTS embodying the PATENTS which are manufactured for use or sale in the United States under the license granted hereunder shall be substantially manufactured in the United States.

5. SUBLICENSING

LICENSEE shall have no ability to sublicense.

6. LICENSEE OBLIGATIONS

LICENSEE shall provide to BATTELLE, within (30) days of termination or expiration of the LICENSE TERM, a written report in a format acceptable to BATTELLE of LICENSEE's technical findings in using the PATENT and commercialization opportunities for the PATENT identified by LICENSEE. At the minimum this report shall include:

- i. A detailed accounting of the work completed or attempted using the PATENT;
- ii. A detailed accounting of the use and disposition of all materials and products made using the PATENT; and
- iii. A detailed accounting of LICENSEE's evaluation of the PATENT.

7. REPRESENTATIONS

A. This Agreement is entered into by BATTELLE in its private capacity. It is understood and agreed that the U.S. Government is not a party to this Agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this Agreement or the subject matter licensed.

B. (i) Nothing in this Agreement shall be deemed to be a representation or warranty by BATTELLE, or the U.S. Government, of the validity of any of the PATENTS or the accuracy, safety or usefulness for any purpose, of any technical information, techniques, or practices at any time made available by BATTELLE.

(ii) Neither the U.S. Government nor BATTELLE nor any affiliated company of BATTELLE shall have any liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage, of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from (1) the production, use or sale of any apparatus or product, or the practice of the PATENT by LICENSEE; (2) the use by LICENSEE of any technical information, techniques, or practices disclosed by BATTELLE; or (3) any advertising or other promotional activities by LICENSEE with respect to any of the foregoing; and

(iii) LICENSEE shall hold the U.S. Government, BATTELLE, and any affiliated company of BATTELLE, harmless in the event the U.S. Government, BATTELLE, or any affiliated company of BATTELLE, is held liable as a result of actions by LICENSEE as set forth in Paragraphs 7B(ii)(1), 7B(ii)(2), and 7B(ii)(3) above.

(iv) Further, LICENSEE agrees to assume the defense of (1) any suit brought against BATTELLE or any affiliated company of BATTELLE resulting from any action of

LICENSEE undertaken under this License Agreement, and (2) any action brought against LICENSEE or BATTELLE resulting from any action of LICENSEE relating to the licensed PATENT.

- C. BATTELLE represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert.
- D. **LICENSEE understands and acknowledges that the subject matter of this Agreement has not yet been commercially demonstrated, and agrees to accept the risks incident to conducting research using a nascent technology.**
- E. LICENSEE acknowledges that LICENSEE has evaluated the PATENT and deems it suitable for LICENSEE's purposes for entering into this Agreement.
- F. BATTELLE is unaware of any claims that have been, are, or could reasonably be asserted against BATTELLE by third parties with respect to patent infringement or any other type of liability relevant to licensing of the PATENT, which have not been disclosed to LICENSEE as of the date of this Agreement.

8. TERMINATION

- A. This Agreement shall expire at the conclusion of the LICENSE TERM unless extended by mutual agreement through a written amendment to this License Agreement.
- B. LICENSEE may terminate this Agreement at any time upon thirty (30) days' written notice in advance to BATTELLE, but LICENSEE shall thereafter discontinue the practice and use of the licensed PATENT.
- C. Termination of this Agreement shall not extinguish any rights or obligations accrued hereunder at the time of termination; and obligations undertaken independent of the License granted under Article 2 shall survive termination to the extent necessary to permit their complete fulfillment or discharge.

9. LITIGATION

LICENSEE agrees to notify BATTELLE of any suspected infringement of the PATENT, and each party shall inform the other of any evidence of such infringement(s) during the term of this Agreement. The sole right to institute a suit for infringement rests with BATTELLE, and BATTELLE shall retain all the proceeds thereof.

10. PATENTS

LICENSEE shall disclose to BATTELLE improvement inventions made solely by LICENSEE. Improvement inventions made solely by LICENSEE shall be the exclusive

property of LICENSEE, but BATTELLE shall be granted a nonexclusive, royalty-free, paid-up license therein for BATTELLE internal purposes only without the right to sublicense, and not for commercial use.

11. ASSIGNABILITY

LICENSEE shall not assign any rights under this Agreement not specifically transferable by its terms without the written consent of BATTELLE. BATTELLE may assign its rights hereunder.

12. REFORM

- A. The parties agree that if any part, term, or provision of this Agreement shall be found illegal or in conflict with any valid controlling law, the validity of the remaining provisions shall not be affected thereby.
- B. In the event the legality of any provision of this Agreement is brought into question because of a decision by a court of competent jurisdiction of any country in which this Agreement applies, BATTELLE, by written notice to LICENSEE, may revise the provision in question or may delete it entirely so as to comply with the decision of said court.

13. NO ENDORSEMENT; USE OF BATTELLE'S NAME; USE OF PNNL

BATTELLE does not endorse products or services. Therefore, LICENSEE agrees that unless required by law, or unless otherwise agreed in advance in writing by BATTELLE, LICENSEE will not use or imply the name "BATTELLE", or any affiliated company of BATTELLE, or "Pacific Northwest National Laboratory", or "PNNL", or associated trademarks, or other trade dress, or use BATTELLE or PNNL reports, for advertising, promotional purposes, raising of capital, recommending investments, or in any way that implies endorsement by BATTELLE or PNNL. However, LICENSEE may publicly disclose the fact that an agreement has been entered into with BATTELLE, including the name of BATTELLE. LICENSEE may disclose in a factual manner that is accurate and not misleading, material facts pertaining to the nature of this Agreement to the extent such disclosure complies with or is required by applicable U.S. Federal and state securities and other laws or the rules and regulations of any public stock exchange, provided that such disclosure does not, in whole or in part, imply any endorsement by BATTELLE or PNNL. LICENSEE further agrees to indemnify and hold BATTELLE, its directors, officers, agents and employees harmless for any damage, loss, claim or suit arising from or relating to LICENSEE's use of the BATTELLE name.

13. WAIVER AND ALTERATION

- A. The waiver of a breach hereunder may be effected only by a writing signed by the waiving party and shall not constitute a waiver of any other breach.

- B. A provision of this Agreement may be altered only by a writing signed by both parties, except as provided in Article ~~1240~~, above.
- C. Due to BATTELLE's status as an incorporated charitable trust exempt from federal income taxes under Section 501(c)(3) of the United States Internal Revenue Code, LICENSEE acknowledges that this Agreement cannot be renegotiated or amended in any manner which may be construed as creating an impermissible private benefit for, or private inurement to, LICENSEE. In the event that such an amendment occurs, the amendment shall be deemed null and void and the terms and conditions applicable immediately before the amendment was implemented shall apply.

14. MARKING

LICENSEE shall place in a conspicuous location on any product made under any PATENT coming with this Agreement, a patent notice in accordance with the laws concerning the marking of patented articles. However, in no event shall LICENSEE mark any LICENSED PRODUCT made or sold under this Agreement with an expired licensed PATENT.

15. IMPLEMENTATION

Each party shall execute any instruments reasonably believed by the other party to be necessary to implement the provisions of this Agreement.

16. CONSTRUCTION

This Agreement shall be construed in accordance with the laws of the State of Washington of The United States of America and in the English language, and any action brought to enforce any provision or obligation hereunder shall be brought in a court of competent jurisdiction in the State of Washington.

17. EXPORTATION OF TECHNICAL INFORMATION

LICENSEE represents and warrants that it shall not export from The United States of America directly or indirectly, any technical information (or the direct product thereof) furnished to LICENSEE either directly or indirectly by BATTELLE, without first complying with all requirements of the Export Administration Regulations, including the requirement for obtaining any export license, if applicable. LICENSEE agrees to indemnify, defend and hold harmless BATTELLE, its officers, agents and employees from all liability involving the violation of such export regulations, either directly or indirectly, by LICENSEE.

18. DISCLAIMER

NEITHER BATTELLE, THE UNITED STATES DEPARTMENT OF ENERGY (DOE), NOR PERSONS ACTING ON THEIR BEHALF MAKE ANY

WARRANTY, EXPRESS OR IMPLIED: (1) WITH RESPECT TO THE MERCHANTABILITY, ACCURACY, COMPLETENESS OR USEFULNESS OF ANY SERVICES, MATERIALS, LICENSED PATENTS, INVENTIONS OR INFORMATION FURNISHED HEREUNDER; (2) THAT THE USE OF ANY SUCH SERVICES, MATERIALS, LICENSED PATENTS, OR INFORMATION WILL NOT INFRINGE PRIVATELY OWNED RIGHTS; (3) THAT THE SERVICES, MATERIALS, LICENSED PATENTS, OR INFORMATION FURNISHED HEREUNDER WILL NOT RESULT IN INJURY OR DAMAGE WHEN USED FOR ANY PURPOSE; OR (4) THAT THE SERVICES, MATERIALS OR INFORMATION FURNISHED HEREUNDER WILL ACCOMPLISH THE INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE, INCLUDING THE INTENDED OR PARTICULAR PURPOSE. FURTHERMORE, BATTELLE AND THE DOE HEREBY SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, FOR ANY PRODUCTS MANUFACTURED, USED OR SOLD BY LICENSEE, THEIR AFFILIATES, ASSIGNS OR SUBLICENSEES. NEITHER BATTELLE NOR THE DOE SHALL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES IN ANY EVENT.

19. NO PRESUMPTION

No provision of this Agreement shall be interpreted for or against any party to this Agreement on the basis that that party was the drafting party of the provision and no presumption or burden of proof shall arise disfavoring or favoring any party by virtue of the authorship of any of the provisions of this Agreement.

20. ENTIRE UNDERSTANDING

This Agreement represents the entire understanding between the parties, and supersedes all other agreements, express or implied, between the parties concerning the subject matter of this Agreement. Specifically, no future representations made by BATTELLE staff shall be effective to alter any provision herein unless such representation shall be made in writing by an authorized representative of BATTELLE having the power to do so.

21. ADDRESSES

For technical matters relating to this Agreement, contact:

Battelle Memorial Institute
Attention Jennifer Hodas, Commercialization Manager
P.O. Box 999, MSIN K1-71
Richland, WA 99352
Telephone: (509) 372-6960
Email: jennifer.hodas@pnnl.gov

For all other communications relating to this Agreement, contact:

Battelle Memorial Institute
Technology Deployment and Outreach
Attention PNNL Compliance Office
P.O. Box 999, Mailstop K1-71
902 Battelle Blvd.
Richland, WA 99352
Telephone: (509) 375-2075
Fax: (509) 372-4589
Email: complianceoffice@pnnl.gov

{ COMPANY NAME, ADDRESS AND CONTACT
INFORMATION }

or any other addresses of which either party shall notify the other party in writing.

22. EXPIRATION

The offer to execute this Agreement shall expire if this Agreement is not signed by both parties and returned to BATTELLE on or before { }.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized officers on the respective dates and at the respective places hereinafter set forth.

BATTELLE MEMORIAL INSTITUTE

{ COMPANY }

BY _____
PRINTED _____
NAME _____

BY _____
PRINTED _____
NAME _____

TITLE Contracting Officer

TITLE _____

DATE _____

DATE _____