

**MEMORANDUM OF UNDERSTANDING
FOR THE
KENTUCKY-ARGONNE BATTERY MANUFACTURING R&D CENTER**

1.0. Parties to this MOU. This Memorandum of Understanding ("MOU") is entered into by and between The Commonwealth of Kentucky and UChicago Argonne, LLC, operator of Argonne National Laboratory ("Argonne") under Prime Contract No. DE-AC02-06CH11357 with the U.S. Department of Energy ("DOE").

2.0 Background. The Kentucky-Argonne Battery Manufacturing R&D Center (Kentucky-Argonne Battery Manufacturing Center or "Center") is a multi-institutional, interdisciplinary, non-profit collaboration established by the Parties to support the development of advanced battery manufacturing technologies of the next decade and beyond. The Center also provides an opportunity for Parties to acquire the knowledge and expertise needed to use this extraordinary capability for advancing science, engineering and other fields. Accordingly, the Parties agree to work in good faith with each other to pursue activities that will further the following Mission, Purposes and Outcomes envisioned for the Kentucky-Argonne Battery Manufacturing Center.

2.1 Mission. The mission of the Kentucky-Argonne Battery Manufacturing Center is to create coordinated multi-institutional efforts to advance battery manufacturing and related fields of science, engineering and technology research and education. The Center fulfills its mission by:

- (1) Fostering excellence in battery manufacturing and related fields of science, engineering and technology research and education;
- (2) Addressing problems in science, engineering and technology that require a range of expertise and experience not available at a single institution;
- (3) Facilitating interdisciplinary and multi-institutional collaboration among the Parties;
- (4) Promoting advanced battery manufacturing technologies and leveraging the assets of Parties to address the technological challenges presented;
- (5) Assisting researchers in seeking funding available to support the projects involving battery manufacturing and related fields of science, engineering and technology research and education; and
- (6) Transferring the advanced technologies developed through industry collaboration with Center staff.

2.2 Purpose. Each of the Parties possess certain advanced scientific facilities and other resources in the general area of advanced battery manufacturing technologies, and certain faculty members or other researchers employed by the Parties have complementary research and academic interests and expertise. It is the intention of the Parties to engage in collaborative, multi-institutional, interdisciplinary research projects, educational initiatives, and other activities to support the Mission and Purpose of the Kentucky-Argonne Battery Manufacturing Center (collectively referred to as "Collaborative Activities"). The purpose of this MOU is to confirm concurrence of the Parties to actively engage in and support the Kentucky-Argonne Battery Manufacturing Center initiative, and share information on federal/state/regional funding opportunities to support these activities.

2.3 Expected Outcomes. Expected outcomes of the Kentucky-Argonne Battery Manufacturing Center include:

- (1) Stimulation of economic growth in the areas where the Parties are located through partnerships with business, industry, government and/or other universities;
- (2) Promotion of employment opportunities in advanced battery manufacturing technologies;
- (3) Enrichment of the educational experiences of university undergraduate students and graduate students of the Parties;
- (4) Enhanced opportunities in obtaining funding for proposals involving battery manufacturing and related fields of science, engineering and technology research and education; and
- (5) Adoption of new manufacturing technologies by commercial firms.

3.0 Potential Collaborative Activities. The Parties recognize and agree that the Kentucky-Argonne Battery Manufacturing Center will only succeed through the development and maintenance of a fully collaborative research environment which takes advantage of the strengths of the Parties, outreach activities, and novel approaches to fostering collaboration through efficient exchange of scientific ideas. The Parties will meet, or communicate with each other, from time to time as deemed appropriate to discuss, monitor, and plan and/or perform Collaborative Activities. The Parties agree to put forth good faith effort to facilitate Collaborative Activities in which the Parties may engage including, but not limited to, the following:

- (1) The Parties intend to collaborate to submit joint proposals to secure external funding from the public and private sectors to support the Mission and Purpose of the Kentucky-Argonne Battery Manufacturing Center.
- (2) The Parties intend to cooperatively plan and conduct joint research and/or development projects or other activities of mutual interest which are self-funded by the Parties and/or supported by external sponsors under separate written agreement.
- (3) The Parties intend to collaborate to build the Center's strengths and capabilities by promoting quality multidisciplinary research, education and training opportunities for Party personnel and students, such as:
 - (a) The Center may hold technical lectures and workshops on mutually agreed topics that will be open to all appropriate personnel and students of the Parties.
 - (b) As a means to foster the technical strength of the Parties, to promote professional growth by the Parties' personnel, and to provide a source for training such personnel to support the Center's Mission, the Parties will identify opportunities for their personnel to perform research and development, training or educational activities in the fields of battery manufacturing and related fields of science, engineering and technology research and education. Such activities will occur under Joint Appointments, Guest Agreements, or other approved collaborative contracts between the Parties.
- (4) The Parties intend to collaborate to identify opportunities and mechanisms for knowledge transfer and technology transfer to assure that results generated by performance of Collaborative Activities are published, transferred and/or licensed for use by the public and private sectors.

- (5) It is anticipated that the Parties will collaborate with universities and/or companies and/or Government agencies that share the Center's vision.
- (6) All Collaborative Activities are subject to available funding, and appropriate contractual agreements and approvals by each Party, including approvals from the U.S. Department of Energy with regard to obligations of Argonne National Laboratory.

4.0 Confidential Information. During the term of this MOU, the Parties, to the extent of each Party's contractual and lawful right to do so, may exchange Confidential Information as is reasonably required to further the Purpose of the Kentucky-Argonne Battery Manufacturing Center under the following terms and conditions.

4.1 Definition. "Confidential Information" is defined as information disclosed under this MOU, which may include but is not limited to samples, materials, data, strategies, plans, techniques, drawings, designs, specifications, software, technical or know-how data, research and development ideas, inventions, and patent disclosures that may be disclosed between the Parties, whether in written, oral, electronic-based or other form, concerning the Mission and Purpose of the Kentucky-Argonne Battery Manufacturing Center. "Confidential Information" as used in this MOU does not refer to classified national security information as specified in Executive Order 12958, Classified National Security Information.

4.2 Term and Permitted Use. The terms and conditions of this MOU shall survive any termination of this MOU with respect to Confidential Information that is disclosed prior to the effective date of termination. The Party receiving Confidential Information (a "recipient") from the other Party disclosing Confidential Information (a "disclosing Party") will use the Confidential Information only for the Purposes of the Center. A recipient will use the same degree of care, but no less than a reasonable degree of care, as the recipient uses with respect to its own similar information to protect the Confidential Information and to prevent unauthorized use or disclosure.

4.3 Markings. To gain protection under this MOU as Confidential Information, the disclosing Party will disclose information in written or other permanent form and will clearly and conspicuously mark such information by designating it as "confidential" or by other appropriate proprietary legend. Information disclosed electronically will be adequately marked if a confidential legend displays when the information originally runs on a computer system and when the information is printed from its data file. If the disclosing Party discloses information in some other form (e.g., orally or visually), the recipient will protect such information as Confidential Information to the extent that the disclosing Party: (a) identifies the information as confidential at the time of original disclosure; (b) summarizes the Confidential Information in writing; (c) marks the writing clearly and conspicuously with an appropriate proprietary legend; and (d) delivers the writing to the recipient within thirty (30) days following the original disclosure.

4.4 Exclusions. This MOU imposes no obligation upon a recipient with respect to Confidential Information which:

- (1) Was already in the recipient's possession on a non-confidential basis prior to receipt from the disclosing Party; or
- (2) Is in the public domain by public use, general knowledge or the like, or after disclosure hereunder, becomes general or public knowledge through no fault of the recipient; or
- (3) Is properly obtained by the recipient from a third party not under a confidentiality obligation to the disclosing Party; or

- (4) Is independently developed by the recipient without a breach of this MOU; or
- (5) Is explicitly approved for disclosure by prior written authorization of the disclosing Party; or
- (6) Is disclosed if required by law or by a government body or court order, provided that the recipient provides the disclosing Party with reasonable advance notice so that the disclosing Party may contest the disclosure or seek a protective order, unless such notice could not reasonably be given.

4.5 Protection Period, Return or Destruction of Confidential Information. Unless the Parties otherwise agree in writing, a recipient's duty to protect Confidential Information expires three (3) years from the date of disclosure. Upon the disclosing Party's written request, a recipient will use reasonable efforts to promptly (i) return all Confidential Information received from the disclosing Party, together with all copies, which are in written or other tangible form, or alternatively, (ii) to destroy all such Confidential Information and certify such destruction in writing. Confidential Information communicated in electronic or other computer retrievable form will be deleted or destroyed; however, each of the Parties acknowledges that Confidential Information that is communicated in electronic or other computer retrievable form may be routinely backed up for archival purposes such that return or destruction would not be practical or feasible, in which case the recipient will use reasonable efforts to keep copies of the Confidential Information on such back-up media secure until such time as the back-up media is recycled or destroyed. A recipient may retain one (1) archival copy of Confidential Information in its possession solely for monitoring its obligations under this MOU, subject to the confidentiality obligations specified herein.

4.6 Disclaimer of Warranty. No Party warrants or represents that a recipient's use of Confidential Information that it receives under this MOU will be free from claims by non-parties for infringement or misappropriation of intellectual property rights. A disclosing Party does not warrant or represent that any information it discloses is complete, accurate, free from defects, or useful for the Purposes. All Confidential Information is provided "as is".

4.7 Disclaimer of License. Confidential Information is and remains the property of the disclosing Party. No license, express or implied, in the disclosing Party's Confidential Information is granted to the recipient other than to use the disclosing Party's Confidential Information in the manner and to the extent authorized by this MOU. It is mutually agreed that no Party is obligated to undertake further negotiations or to enter into any research agreement or other collaborative agreement pertaining to the Confidential Information as a result of the agreement expressed herein.

5.0 Governance.

5.1 A five person Advisory Board will be formed pursuant to KRS 12.029 to oversee the mission, directions, policies, and strategic direction of the Center. The Governor of Kentucky will appoint the chair of the Advisory Board. The University of Kentucky, the University of Louisville, and Argonne National Laboratory will each appoint a representative to the Advisory Board. These three representatives will select the fourth person for the Advisory board that is not affiliated with either University or Argonne National Laboratory. The Advisory Board will be confirmed by the Parties on an annual basis. The Advisory Board will meet in person or through telephone conference call on a quarterly basis.

5.2 The Parties intend that the Center will be administered by a Director, an Associate Director for Program Development, an Associate Director for Industrial Liaison, and an Administrative Assistant. The staffing for these positions will be determined by the Advisory Board. The funding for these positions will be by separate written agreement, subject to available funding.

5.3 Each Party will also designate an employee ("Coordinator") who will act as liaison and be responsible for facilitating efforts related to the Center on a day-to-day basis. The Coordinator and contact information are specified in Article 8 entitled "Notices". The designated Coordinator may be updated by written notice to the other Parties from time to time.

6.0 Financial Obligations. Except as may be expressly provided in a separate written agreement by the affected Parties, all costs incurred by any Party under this MOU or in the performance of Collaborative Activities associated with the Center will be borne by the Party incurring such costs. No Party shall have the right to any reimbursement, payment or compensation of any kind from the other Parties under this MOU.

7.0 Use of Names. No Party will use the name of any other Party in any form of advertising or publicity without the express written permission of the other affected Party. However, the Parties may make statements of fact, including but not limited to identification of the Parties of the Kentucky-Argonne Battery Manufacturing Center, in related Websites or in publications or proposals.

8.0 Notices. Any notice given under this MOU will be in writing and will be deemed given (a) when delivered personally; (b) when sent by confirmed facsimile; (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) days after deposit with a commercial overnight carrier with confirmed verification of receipt. All communications will be sent by the initiating Party to the other Party(ies) addressed as follows:

For: The Commonwealth of Kentucky
700 Capitol Avenue
Frankfort, KY 40601

Governor Steven L. Beshear

For: UChicago Argonne, LLC, operator of Argonne National Laboratory
9700 South Cass Avenue,
Lemont, Illinois 60439

Deputy Director for Programs, Eric D. Isaacs

9.0 Relationship of the Parties. Each Party participating in any Collaborative Activity under auspices of the Kentucky-Argonne Battery Manufacturing Center will have sole control over the work performed by its own personnel under this MOU. The relationship of each Party to the other Party under this MOU will be as an independent contractor and not as an agent, joint venturer, or partner of the other Party. Nothing in this MOU will be construed as authorization for any Party to act as agent for the other Party.

10.0. No Obligation. It is mutually agreed that no Party hereto is obligated to undertake further negotiations or to enter into any grant, contract, or other agreement as a result of the agreement expressed herein.

11.0 Term and Termination. This MOU shall be effective as of the date the MOU is executed by each Party and shall continue for a period of three (3) years, unless terminated by any Party providing thirty

(30) days advance written notice to the other Party. Termination of this MOU by any Party will not affect the rights and obligations of the Parties accrued prior to such termination.

12.0 Freedom to Operate. Each Party reserves the right to engage in similar or related non-funded collaborative research efforts or funded, sponsored research agreements, grants or contracts with any other party (e.g., educational institutions, companies or Federal agencies), without notice to and without any accountability to the other Party.

13.0 Resolution of Disputes. The Parties agree that if any of the terms herein are subject to questions of intent or interpretation or if the Parties identify other issues that are not addressed in this MOU, they will enter into good faith negotiations to resolve any such issues. Resolution of any such issues will be confirmed by a written amendment.

14.0 Export Compliance. The Parties will comply with all U.S. export control laws and regulations.

15.0 Miscellaneous. This MOU embodies the entire understanding among the parties and will supersede all previous or contemporaneous communications, either verbal or written, between the Parties relating to this MOU. If any provision of this MOU is found to be invalid or unenforceable in whole or in part, the Parties agree the remaining provisions of this MOU shall remain valid and enforceable to the maximum extent compatible with applicable law. No modification, alteration or amendment to this MOU will be effective unless confirmed in a written agreement signed by an authorized representative of each Party.

UChicago Argonne, LLC
Operator of Argonne National Laboratory

By: Eric D. Isaacs

Typed Name: Eric D. Isaacs

Title: Deputy Director for Programs

Date: 3/25/09

The Commonwealth of Kentucky

By: Steven L. Beshear

Typed Name: Steven L. Beshear

Title: Governor

Date: 4-8-09