AGREEMENT CONCERNING JOINT APPOINTEES: WASHINGTON STATE UNIVERSITY AND BATTELLE MEMORIAL INSTITUTE, PACIFIC NORTHWEST DIVISION

I. PARTIES

This Agreement is between Washington State University (University or WSU), an agency of the State of Washington, and Battelle Memorial Institute, Pacific Northwest Division (Battelle), the contractor operating the Pacific Northwest National Laboratory (PNNL) on behalf of the U.S. Department of Energy (DOE) under Contract No. DE-AC05-76RL01830. Where referenced jointly in this Agreement, Battelle and WSU are the Parties. Where referenced singularly, each is a Party.

II. PURPOSE

This Agreement creates a joint appointment program that will attract, retain, and recognize scientists and engineers with rising national stature and reputation at all levels and, therefore, will enhance the ability of both institutions (e.g., WSU and PNNL) to achieve research missions related to a broad range of energy, environmental, health and national security issues. Thereby, this Agreement seeks to enhance the quality of science, technology, education, and industrial development in the regional, state, and national economies.

III. NOMINATION AND SELECTION OF JOINT APPOINTEES

A. WSU and Battelle will cooperate to recruit and hire candidates for joint appointments. Incumbent employees of both Parties may also be considered for joint appointments. Each appointment shall be subject to a maximum initial five (5) year term, be subject to the mutual written agreement between the parties and be subject to the conditions set forth in Section IV. Joint appointments will be approved by the PNNL Deputy Director for Science and Technology and the WSU Vice-President for Research.

B. The hiring Party shall use its own hiring criteria, involving the non-employer Party in development of the position description, giving due regard to joint goals and needs of the Parties together.

C. Position descriptions, advertisements and postings shall set forth the joint nature of the appointments, reference both Parties and be consistent with the position outlines and structure of appointment set forth in Section IV.

D. Funding arrangements shall be made specifically for each joint appointment in accordance with law and each Party's policies. Allocations for funding shall be agreed to in writing. The Parties shall jointly assess the joint appointee's skills and accomplishments, market forces/standards, respective institutional budgets, and the needs of their joint and related projects.
IV. STRUCTURE OF JOINT APPOINTMENTS

A. Employees hired by each Party and designated as a joint appointee shall be bound by the terms and conditions of the employing Party and shall not be considered employees of the other Party. Additionally, each appointee shall:

1. Be hired pursuant to and be subject to terms and conditions of employment with one Party (which shall be either Battelle or WSU, hereafter the "employing Party") so as to establish continuity of benefits and terms and conditions of employment. The employing Party shall provide salary and benefits in accordance with its policies and procedures, and shall be responsible for the management and control of said employee. Shall any such policy be determined to be not in accordance with law by a court of competent jurisdiction, that provision shall be severed and the remainder of the employment agreement shall remain intact. An existing employee of either Party selected for joint appointment under this Agreement shall remain the employee of his/her existing employer;

2. Hold a WSU academic title consistent with the appointee’s training, experience and duties and awarded in compliance with WSU policies and its Faculty Manual (e.g., persons employed by Battelle under this Agreement shall be recognized by a WSU academic title and shall engage in duties commensurate with that title, including the ability to serve on graduate student committees as approved by the WSU Graduate School and the supervision of WSU graduate students);

3. Hold a PNNL title consistent with the appointee’s training, experience and duties (e.g., persons employed by WSU under this Agreement shall be recognized with a PNNL title and shall engage in duties commensurate with that title);

B. Each joint appointment shall be for an initial maximum period of five (5) years. Reappointment may occur based on merit and programmatic needs. Absent reappointment, the joint appointment shall end with no further notice, with the appointee retaining any rights to his/her underlying position, if such rights exist, and subject to the policies of the employer.

C. Employees of either Party shall be bound by applicable state and federal laws and regulations as well as policies of the employing entity.

D. The non-employer Party may withdraw appointment support for an individual joint appointee at any time during the period of joint appointment, provided:

1. It provides the employing Party at least three (3) months’ notice of intent to withdraw support for the appointee. Support may be withdrawn upon expiration of the notice period without cause; or

2. It provides the employing Party with notice of cause for the individual appointee’s termination from joint appointment. The non-employing Party may withdraw support upon the earlier of 1) ten (10) days from the date of providing notice of cause for termination of the joint appointment, or 2) the joint appointee’s termination by the employing Party.
3. Withdrawal of support or termination from joint appointment does not impact the appointee’s underlying employment by one of the Parties. Such employment shall be subject to the terms and conditions set forth by the employing Party.

**V. WORK ASSIGNMENTS, PAYMENT OF COSTS**

A. In consultation with and upon approval of the other Party (the receiving Party), the employing Party may assign a joint appointee to the other Party’s facilities as part of this Agreement, subject to revocation upon reasonable notice by either Party. Such an assigned appointee shall not be considered the employee of the receiving Party for any purpose during the course of that appointment subject to this Agreement. Facility access may be immediately revoked for cause upon written notice by the receiving Party.

B. While the joint appointee is working in facility space controlled by the receiving Party the joint appointee shall abide by the health, environmental, safety, security and training requirements of that facility. The joint appointee shall also abide by the protocols and project research requirements of the receiving Party during the period of the assignment.

C. The employing Party will invoice the receiving Party for the cost incurred under assignments based on the assigned appointee’s total compensation, including benefits and appropriate overheads. The methodology for invoicing such cost shall be agreed to in advance and in writing.

D. The receiving Party will reimburse the employing Party pursuant to a purchase order or contract consistent with this Agreement, as well as applicable laws and regulations.

E. In consideration of the benefits of assignment to the Parties and people of the State of Washington and given that each Party will assign some of its employees to the other Party, the Parties will charge a minimal overhead associated with a joint appointee.

**VI. RESEARCH INTEGRITY**

PNNL and WSU shall follow their own policies to monitor research integrity, including inquiry and investigation of allegations of research misconduct. Where research projects are staffed by employees of both Parties, the policy of the entity that employs the principle investigator (PI) shall govern. Where there are co-PIs, the Parties shall agree in advance of the commencement of work as to the governing research integrity provisions. Each Party shall cooperate with the other in any inquiry or investigation regarding research integrity/misconduct.

**VII. TERMINATION OF THE AGREEMENT**

This Agreement shall be effective on the date last signed and shall continue for a period of five (5) years. It may be extended by a signed writing.

Exception — Termination within the Agreement’s First Year (only): Notwithstanding this provision, either Party may terminate this Agreement without cause and upon six (6) weeks’ notice within one (1) year of the Agreement’s effective date.
Exception — Termination for Cause: Termination of this Agreement for cause may occur: Upon impossibility of performance based on unforeseen circumstances, material breach of the terms and conditions of this Agreement, or upon other reason supported at law as cause. Notice of termination for cause shall be provided by the aggrieved Party to the other Party of such failure or violation. The Party so notified shall have six (6) months to cure the breach or violation. If no such cure is effected, this Agreement shall be finally terminated for cause upon notice at the expiration of the cure period by the aggrieved Party to the other Party. Notwithstanding the above, in the event of an imminent risk to health, safety, or security the receiving Party may immediately suspend access of a joint appointee to its facilities.

Exception — Agreement to Terminate: The Parties may agree to terminate this Agreement through a writing signed by the authorized representative of each of them. Termination of this Agreement shall not operate to waive or release obligations or liabilities of the Parties to joint appointees, one Party to the other, or otherwise inhering in the operation of this Agreement, nor shall it release them from obligations set forth in state or federal laws or regulations operable during the course of this Agreement. Parties shall exercise best efforts to avoid incursion of unnecessary expenses or costs subsequent to notice of intent to terminate the Agreement.

VIII. INTELLECTUAL PROPERTY

A. All joint appointments will have intellectual property rights clearly delineated in writing prior to the appointment taking place. Such agreement will define the manner in which intellectual property conceived, first reduced to practice, invented, authored, or otherwise created during the period of a joint appointment will be owned, protected, and commercialized. The agreement may also provide means for accounting and sharing royalties for such intellectual property.

B. The Parties agree that a separately negotiated Inter-Institutional Agreement may be executed by the Parties and the WSU Research Foundation to govern all joint appointments.

IX. NOTICES

Any notice under the Agreement shall be in writing and shall be hand-delivered, mailed via the United States Postal Service, or delivered via nationally recognized expedited delivery service to the contract administrator of the Party receiving notice, to wit:

WSU Contract Administrator:
Dan Nordquist
PO Box 643140
Pullman, WA 99163
509-335-7717

PNNL Contract Administrator: Bruce Simanton, Contracting Officer, Pacific Northwest National Laboratory, P.O. Box 99, M/S J1-15, Richland, Washington 99352. Telephone number (509) 371-7608.

X. SEVERABILITY

Should any provision of the Agreement be determined by a court or regulatory agency of competent jurisdiction to be invalid, illegal or unenforceable, it shall be severed and the remaining provisions shall not be impaired or affected thereby.
XI. MODIFICATIONS OR AMENDMENTS

This Agreement may be modified or amended only upon mutual agreement evidenced by a signed writing signed by an authorized representative of each Party.

XII. ASSIGNMENT

This Agreement binds and inures to the benefit of the Parties, their successors and assigns. It may not be otherwise assigned by either Party without the express written consent by the other. EXCEPTION: Battelle may transfer or assign this Agreement or its administration to the Department of Energy (DOE) or its designee with notice of such transfer to WSU.

XIII. COMPLETE AND FINAL AGREEMENT

This Agreement is the complete and final agreement of the Parties as to its subject matter — joint appointees between PNNL and WSU — and it supersedes any prior oral or written agreements or negotiations as to its subject matter including any agreement previously executed with a single campus of WSU.

Read and agreed by the following authorized representatives signing on behalf of the Parties:

WASHINGTON STATE UNIVERSITY

By: ______________________
Typed Name: Elson S. Floyd, Ph.D.
Title: President, Washington State University
Date: October 20, 2008

BATTELLE MEMORIAL INSTITUTE

PACIFIC NORTHWEST DIVISION

By: ______________________
Typed Name: Michael Kluse
Title: Director
Date: Oct 31, 2008