

[Insert Lab Name] CRADA No. 18-XXX; [Insert Lab Name] No. 18-XXX; [Insert Lab Name] No. 18-XXX

**Multi-Laboratory Single Participant  
HydroGEN CRADA**

**STEVENSON-WYDLER (15 U.S.C. 3710a)  
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT  
(hereinafter "CRADA")**

**between**

as Operator of \_\_\_\_\_ Laboratory  
under its U. S. Department of Energy Contract  
No. DE-\_\_\_\_\_ (hereinafter "1<sup>st</sup> Contractor")

**and**

as Operator of \_\_\_\_\_ Laboratory  
under its U. S. Department of Energy Contract  
No. DE-\_\_\_\_\_ (hereinafter "2<sup>nd</sup> Contractor")

**and**

as Operator of \_\_\_\_\_ Laboratory  
under its U. S. Department of Energy Contract  
No. DE-\_\_\_\_\_ (hereinafter "3<sup>rd</sup> Contractor")  
(hereinafter being jointly referred to as "Contractors" or individually as "Contractor")

**and**

<Participant>  
<Address>  
<City, State, Zip>  
(hereinafter "Participant"),

**all being hereinafter jointly referred to as the "Parties" or individually as a "Party".**

**ARTICLE I: DEFINITIONS**

- A. "Background Intellectual Property" means the Intellectual Property identified by the Parties in Annex B, Background Intellectual Property, which was in existence prior to or is first produced outside of this CRADA, except that in the case of inventions in those identified items, the inventions must have been conceived outside of this CRADA and not first actually reduced to practice under this CRADA to qualify as Background Intellectual Property.
- B. "Computer Software" means (i) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) recorded information comprising source

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code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

- C. "Contracting Officer" means the DOE employees administering the Contractors' DOE contracts.
- D. "DOE" means the Department of Energy, an agency of the Federal Government.

E. "Foreign Interest" is defined as any of the following: A foreign government or foreign government agency; Any form of business enterprise organized under the laws of any country other than the United States or its possessions; Any form of business enterprise organized or incorporated under the laws of the United States, or a State or other jurisdiction within the United States, which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or Any person who is not a U.S. citizen.

F. "Foreign ownership, control, or influence (FOCI)" means the situation where the degree of ownership, control, or influence over a Participant by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material, as defined in 10 CFR Part 710.5, may result.

- G. "Generated Information" means information including data, produced in the performance of this CRADA.
- H. "Government" means the Federal Government of the United States of America and agencies thereof.
- I. "Intellectual Property" means patents, trademarks, copyrights, mask works, Protected CRADA Information, and other forms of comparable property rights protected by Federal law and foreign counterparts, except trade secrets.
- J. "Proprietary Information" means information, including data, which is developed at private expense outside of this CRADA, is marked as Proprietary Information, and embodies (i) trade secrets or (ii) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).
- K. "Protected CRADA Information" means Generated Information which is marked as being Protected CRADA Information by a Party to this CRADA and which would have been Proprietary Information had it been obtained from a non-Federal entity.
- L. "Subject Invention" means any invention of a Party conceived or first actually reduced to practice in the performance of work under this CRADA.
- M. "Contractors" means, collectively, the 1<sup>st</sup> Contractor, 2<sup>nd</sup> Contractor, and [3<sup>rd</sup> Contractor, etc.] identified on the title page of this CRADA.

**Commented [N1]:** "Foreign Interest" definition to be included only for a CRADA that involves access to classified information, access to special nuclear materials or unescorted access to security areas of Departmental facilities. Insert language on case-by-case basis.

**Commented [N2]:** "Foreign ownership, control or influence (FOCI)" definition to be included only for a CRADA that involves access to classified information, access to special nuclear materials or unescorted access to security areas of Departmental facilities. Insert language on case-by-case basis.

**ARTICLE II: STATEMENT OF WORK, TERM, FUNDING AND COSTS**

- A. Annex A, the Statement of Work is an integral part of this CRADA.
- B. Notices: The names, postal addresses, telephone and email addresses for the Parties are provided in the Statement of Work. Any communications required by this CRADA, if given by postage prepaid first class U.S. Mail or other verifiable means addressed to the Party to receive the communication, shall be deemed made as of the day of receipt of such communication by the addressee, or on the date

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given if by email. Address changes shall be made by written notice and shall be effective thereafter. All such communications, to be considered effective, shall include the number of this CRADA.

- C. The effective date of this CRADA shall be the latter date 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) the date on which the advance funding referred to in this Article is received by the Contractors. The work to be performed under this CRADA shall be completed within \_\_\_\_ months/years from the effective date.
- D. The Participant's estimated contribution is \$ \_\_\_\_, which includes \$ \_\_\_\_ funds-in, and is comprised of the following funds-in contributions to the individual Contractors: \$ \_\_\_\_ funds-in to <1st Contractor>; \$ \_\_\_\_ funds-in to <2nd Contractor>; and \$ \_\_\_\_ funds-in to <3rd Contractor>. The Government's estimated contribution is subject to available funding and will be provided directly to each Contractor through the prime contract between DOE and the Contractor. The Government's estimated contribution includes \$ \_\_\_\_ to <1st Contractor>; \$ \_\_\_\_, to <2nd Contractor>; and \$ \_\_\_\_, to <3rd Contractor>. For CRADAs which include funding on a funds-in basis, Participant shall provide the Contractors, prior to any work from being performed by the Contractors, a budgetary resource sufficient to cover the anticipated work that will be performed during the first billing cycle. In addition, the Participant shall provide sixty (60) days of additional funding to ensure that funds remain available for project during subsequent billing cycles. No work will begin before the receipt of a cash advance. Failure of Participant to provide the necessary advance funding is cause for termination of the CRADA in accordance with the Termination article of the CRADA. A billing cycle is the period of time between billings, usually thirty (30) days. The billing cycle is complete when the customer is billed for services rendered.
- E. No Party shall have an obligation to continue or complete performance of its work at a contribution in excess of its estimated contribution as contained in Article II.D., above, including any subsequent amendment.

### **ARTICLE III: PERSONAL PROPERTY**

All tangible personal property produced or acquired under this CRADA (specifically excluding Intellectual Property rights, Background Intellectual Property, and Proprietary Information) shall become the property of the Participant or the Government, depending upon whose funds were used to obtain it. Personal property shall be disposed of as directed by the owner at the owner's expense. There shall not be any jointly funded property under this CRADA except by the mutual agreement of the Parties. The Participant shall maintain records of receipts, expenditures, and the disposition of all Government property in its custody related to the CRADA.

### **ARTICLE IV: DISCLAIMER**

THE GOVERNMENT, THE PARTICIPANT, AND THE CONTRACTORS 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 CRADA, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THE RESEARCH OR RESULTING PRODUCT. ALL WORK PERFORMED HEREUNDER BY ANY PARTY IS PROVIDED 'AS-IS' WITH ALL FAULTS, ERRORS AND OMISSIONS. NEITHER THE GOVERNMENT, THE PARTICIPANT, NOR THE CONTRACTORS SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS CRADA.

**ARTICLE V: PRODUCT LIABILITY**

Except for any liability resulting from any negligent acts or willful misconduct or omissions of a Contractor or the Government, the Participant indemnifies the Government and the Contractors for 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 Participant, its assignees, or licensees, which was derived from the work performed under this CRADA. In respect to this article, neither the Government nor the Contractors shall be considered assignees or licensees of the Participant, as a result of reserved Government and Contractors rights. The indemnity set forth in this paragraph shall apply only if the Participant shall have been informed as soon and as completely as practical by the Contractors and/or the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Contractors and/or the Government shall have provided all reasonably available information and reasonable assistance requested by the Participant. No settlement for which the Participant would be responsible shall be made without the Participant's consent unless required by final decree of a court of competent jurisdiction.

**ARTICLE VI: RIGHTS IN SUBJECT INVENTIONS**

Wherein DOE has granted the Participant and the Contractors the right to elect to retain title to their respective Subject Inventions, and wherein the Participant has the option to choose an exclusive license, for reasonable compensation, for a pre-negotiated field of use to the Contractors' Subject Inventions,

- A. Each Party shall have the first option to elect to retain title to any of its Subject Inventions and that election shall be made: (1) for the Participant, within 12 months of disclosure of the Subject Invention to DOE or, (2) for the Contractors, within the time period specified in their prime contracts for electing to retain title to Subject Inventions. However, such election shall occur not later than 60 days prior to the time when any statutory bar might foreclose filing of a U.S. Patent application. The electing Party has one year to file a patent application after such election unless any statutory bar exists. If a Party elects not to retain title to any of its Subject Inventions or fails to timely file a patent application, the other Parties shall have the second option to elect to obtain such title, either by each electing Party having an equal undivided interest or by other arrangement agreed to by all the electing Parties. The electing Parties shall have the second option to elect to obtain title to such Subject Invention within one year of notification and file a patent application within one year after such election and no less than 30 days prior to a statutory bar, if any. For Subject Inventions that are joint Subject Inventions of the Contractor(s) and the Participant, title to such Subject Inventions shall be jointly owned by the inventing Parties; for such jointly owned Subject Inventions, the Parties agree to negotiate in good faith a Joint Intellectual Property Management Agreement, which, at minimum addresses the rights and responsibilities of the Parties with respect to control of and payment for patent prosecution, payment of patent maintenance fees, and licensing activities, including the control of licensing negotiations and allocation of royalties.
- B. The Parties agree to assign to DOE, as requested by DOE, the entire right, title and interest in any country to each Subject Invention where the Parties
- (1) do not elect pursuant to this article to retain/obtain such rights, or
  - (2) elect to retain/obtain title to a Subject Invention but fail to have a patent application filed in that country on the Subject Invention or decide not to continue prosecution or not to pay any maintenance fees covering the Subject Invention.

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If DOE is granted a patent on Participant's Subject Invention, the Participant may request a non-exclusive license and DOE will determine whether to grant such license pursuant to statutory authority.

- C. The Parties acknowledge that the Government retains a nonexclusive, nontransferable, irrevocable, paid-up license to practice or to have practiced for or on behalf of the United States every Subject Invention under this CRADA throughout the world. The Parties agree to execute a Confirmatory License to affirm the Government's retained license.
- D. The Parties agree to disclose to one another each Subject Invention which may be patentable or otherwise protectable under U.S. patent law. The Parties agree that the Contractors and the Participant will disclose their respective Subject Inventions to DOE and one another within two (2) months after the inventor first discloses the Subject Invention in writing to the person(s) responsible for patent matters of the disclosing Party.

These disclosures should be in sufficiently complete technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, and operation of the Subject Invention. The disclosure shall also identify any known actual or potential statutory bars, e.g., printed publications describing the Subject Invention or the public use or "on sale" of the Subject Invention. The Parties further agree to disclose to one another any subsequently known actual or potential statutory bar that occurs for a Subject Invention disclosed but for which a patent application has not been filed. All Subject Invention disclosures shall be marked as confidential under 35 U.S.C. 205.

- E. The Parties agree to include within the beginning of the specification of any U.S. patent applications and any patent issuing thereon (including non-U.S. patents) covering a Subject Invention, the following statement: "This invention was made under a CRADA (identify CRADA number) between (name the Participant) and (name the laboratory/laboratories) operated for the United States Department of Energy. The Government has certain rights in this invention."
- F. The Parties acknowledge that DOE has certain march-in rights to any Subject Inventions in accordance with 48 CFR 27.304-1(g) and 15 U.S.C. 3710a(b)(1)(B) and (C).
- G. The Participant agrees to submit, for a period of five (5) years from the date of termination or completion of this CRADA and upon the request of DOE, a nonproprietary report no more frequently than annually on efforts to utilize any Intellectual Property arising under the CRADA including information regarding compliance with the U.S. Competitiveness provision of this CRADA.
- H. For a period of 6 months after each Contractor Subject Invention is disclosed to the Participant, the Participant shall have the opportunity, pursuant to 15 U.S.C. 3710a, to obtain a license to that Subject Invention. In particular, the Participant shall have the option to obtain, up to and including, an exclusive license to the Subject Invention within a defined field of use on agreed-upon reasonable terms and conditions, including the payment of negotiated license fees and royalties.
- I. Each Party may use another Party's Background Intellectual Property identified in Annex C of this CRADA solely in performance of the Statement of Work. This CRADA does not grant to any Party any option, grant, or license to commercialize, or otherwise use another Party's Background Intellectual Property. Licensing of Background Intellectual Property, if agreed to by the Parties, shall be the subject of the separate licensing agreements between the Parties. Each Party has used reasonable efforts to list all relevant Background Intellectual Property, but Background Intellectual Property may exist that is not identified. No Party shall be liable to another Party because of failure to list Background Intellectual Property.

**ARTICLE VII: RIGHTS IN DATA**

- A. The Parties agree that they shall have no obligations of nondisclosure or limitations on their use of, and the Government shall have unlimited rights in, all Generated Information produced and information provided by the Parties under this CRADA, except for restrictions on data provided for in this Article or data disclosed in a Subject Invention disclosure being considered for Patent protection.
- B. **PROPRIETARY INFORMATION:** Each Party agrees to not disclose Proprietary Information provided by another Party to anyone other than the CRADA Participant, Contractors and their respective subcontractors, agents, and consultants, (if any) authorized to perform work under this CRADA without written approval of the providing Party, 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). Government employees shall not be required to sign non-disclosure agreements due to the provisions of the above-cited statute.

If Proprietary Information is orally disclosed to a Party, it shall be identified as such, orally, at the time of disclosure and confirmed in a written summary thereof, appropriately marked by the disclosing Party, within thirty (30) days as being Proprietary Information. All Proprietary Information shall be protected by the recipient for a period of five (5) years from the effective date of this CRADA, unless such Proprietary Information becomes publicly known without the fault of the recipient, shall come into recipient's possession without breach by the recipient of any of the obligations set forth herein, can be demonstrated by the recipient by written record that it is known prior to receipt from disclosing party, is disclosed by operation of law, or is independently developed by recipient's employees who did not have access to such Proprietary Information.

Upon request, Proprietary Information in tangible form shall be returned to the disclosing Party at the disclosing Party's expense or destroyed with a certificate of destruction submitted to the disclosing Party upon termination or expiration of this CRADA, or during the term of this CRADA upon request by the disclosing Party. Notwithstanding the foregoing, destruction of copies shall not extend to archival copies maintained in computer system backup files, permanent business records, or as may otherwise be required by receiving Party's internal document retention policies.

- C. **PROTECTED CRADA INFORMATION:** Except where a Participant's Federal funding agreement prohibits such protection, each Party may designate and mark as Protected CRADA Information any Generated Information produced by its employees, which meets the definition in Article I and, with the agreement of another Party, so designate any Generated Information produced by that other Party's employees which meets the definition in Article I. All such designated Protected CRADA Information shall be appropriately marked.

Because The Regents is part of an institution of higher education and intends to conduct its activities as fundamental research under the U.S. Export Administration Regulations, The Regents does not intend to mark any of its Generated Information as Protected CRADA Information.

**Commented [BM3]:** To be included only when LBNL is a member to the CRADA

For a period of five (5) years from the date Protected CRADA Information is produced, the Parties agree not to further disclose such information and to use the same degree of care and discretion, but no less than reasonable care and discretion, to avoid disclosure, publication or dissemination of such information to a third party, as the Party employs for similar protection of its own information which it does not desire to disclose, publish, or disseminate except:

- (1) as necessary to perform this CRADA;

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- (2) as published in a patent application or an issued patent before the protection period expires;
- (3) as provided in Article X [REPORTS AND PUBLICATIONS];
- (4) as requested by the DOE Contracting Officer to be provided to other DOE facilities for use only at those DOE facilities solely for Government use only with the same protection in place and marked accordingly.
- (5) when a specific maximum time period for delaying the public release of data is authorized in the terms of a Government funding agreement used to fund this CRADA and that maximum period is shorter than the time period set forth in this Article for protecting Protected CRADA Information;
- (6) to existing or potential licensees, affiliates, customers, or suppliers of the Parties in support of the commercialization of the technology with the same protection in place. Disclosure of the Participant's Protected CRADA Information under this subparagraph shall only be done with the Participant's consent; or
- (7) as mutually agreed to by the Parties in advance.

The obligations of this paragraph shall end sooner for any Protected CRADA Information which shall become publicly known without fault of any Party, shall come into a Party's possession without breach by that Party of the obligations of paragraph above, or shall be independently developed by a Party's employees who did not have access to the Protected CRADA Information. Federal Government employees who are subject to 18 USC 1905 may have access to Protected CRADA Information and shall not be required to sign non-disclosure agreements due to the provisions of the statute.

- D. **COPYRIGHT:** The Parties may assert Copyright in any of their respective Generated Information. Assertion of Copyright generally means to enforce or give an indication of an intent or right to enforce such as by marking or securing Federal registration. Copyrights in co-authored works by employees of more than one Party shall be held jointly by those Parties and use by any such Party shall be without accounting.
- E. **COMPUTER SOFTWARE:** For all Computer Software produced in the performance of this CRADA, the Parties shall provide an Announcement Notice, AN 241.4 Software Announcement Notice, along with providing the source code, the executable object code and the minimum support documentation needed by a competent user to understand and use the Computer Software to DOE's Energy Science and Technology Software Center (ESTSC) via [www.osti.gov/estsc](http://www.osti.gov/estsc). The source code of the Computer Software may be marked as Protected CRADA Information in accordance with this Article; however, the Government's use of the executable object code is governed by the applicable license below.

For Generated Information that is Copyrighted Computer Software produced by a Party, the Party shall inform DOE's ESTSC when it abandons or no longer commercializes the Copyrighted Computer Software. Until such notice to ESTSC, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. (narrow license) After the Party owning the Copyrighted Computer Software abandons or no longer commercializes the Copyrighted Computer Software, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. (broad license)

For all other Generated Information where a Party asserts copyright in copyrightable works produced in the performance of this CRADA, the Government has for itself and others acting on its behalf, a

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royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, subject to the restrictions this Article places on publication of Proprietary Information and Protected CRADA Information.

The Parties agree to place Copyright and other notices, as appropriate for the protection of Copyright, in human-readable form onto all physical media, and in digitally encoded form in the header of machine-readable information recorded on such media such that the notice will appear in human-readable form when the digital data are off loaded or the data are accessed for display or printout.

- F. The Parties agree that Contractors may utilize one or more agents, consultants or subcontractors to perform work under this Agreement, provided (1) that the use of such agents, consultants or subcontractor(s) does not interfere with the rights and obligations of Contractor under this Agreement and (2) that such agents, consultants or subcontractor(s) agree to comply with the non-use and non-disclosure provisions of this Agreement.

#### **ARTICLE VIII: U.S. COMPETITIVENESS**

The Parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy.

- A. In exchange for the benefits received under this CRADA, the Participant therefore agrees to the following:
- (1) Products embodying Intellectual Property developed under this CRADA shall be substantially manufactured in the United States, and
  - (2) Processes, services, and improvements thereof which are covered by Intellectual Property developed under this CRADA shall be incorporated into the Participant's manufacturing facilities in the United States either prior to or simultaneously with implementation outside the United States. Such processes, services and improvements, when implemented outside the United States, shall not result in reduction of the use of the same processes, services, or improvements in the United States.
- B. Each Contractor agrees to a U.S. Industrial Competitiveness clause in accordance with its prime contract with respect to any licensing and assignments of its Intellectual Property arising from this CRADA, except that any licensing or assignment of its intellectual property rights to the Participant shall be in accordance with the terms of paragraph A of this Article.
- C. If the Participant later finds that it cannot meet the requirements of Paragraph A above, the Participant will submit a plan for providing net benefit to the US economy to DOE. If such plan is approved by DOE, it shall be incorporated into this CRADA by an amendment to be executed by the Parties. If the CRADA is completed or terminated and DOE approves of the plan, the DOE Contracting Officer shall issue an approval letter.

#### **ARTICLE IX: EXPORT CONTROL**

THE PARTIES UNDERSTAND THAT MATERIALS AND INFORMATION RESULTING FROM THE PERFORMANCE OF THIS CRADA MAY BE SUBJECT TO EXPORT CONTROL LAWS AND THAT EACH PARTY IS RESPONSIBLE FOR ITS OWN COMPLIANCE WITH SUCH LAWS. EXPORT LICENSES OR OTHER AUTHORIZATIONS FROM THE U.S. GOVERNMENT MAY BE REQUIRED FOR THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT EXPORT CONTROL REQUIREMENTS



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MAY CHANGE AND THAT THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES FROM THE U.S. WITHOUT AN EXPORT LICENSE OR OTHER APPROPRIATE GOVERNMENTAL AUTHORIZATION MAY RESULT IN CRIMINAL LIABILITY.

Participant acknowledges that The Regents has many foreign employees and students. The Participant agrees that The Regents will conduct this project as fundamental research with no restrictions on publication. Accordingly, The Regents does not intend to mark any of its Generated Information as Protected CRADA Information and the Participant agrees not to direct The Regents to create export controlled information and not to transfer to Principal Investigator or to other employees or students of The Regents any Proprietary Information or Protected CRADA Information that is export controlled under the Export Administration Regulations, the International Traffic in Arms Regulations, or 10 CFT 810.

**Commented [BM4]:** To be included only when LBNL is a member to the CRADA

The Participant has a continuing obligation to provide the Contractors written notice of any changes in the nature and extent of Foreign Ownership, Control or Influence over the Participant which would affect the Participant's answers to the previously completed FOCI certification.

**Commented [N5]:** Additional language to be included only for a CRADA that involves access to classified information, access to special nuclear materials or unescorted access to security areas of Departmental facilities. Therefore, this language is not applicable to all laboratory CRADAs. Insert language on case-by-case basis. Further, such laboratory to provide applicable FOCI certification form to be completed subject to such laboratory's review and comment.

#### **ARTICLE X: REPORTS AND PUBLICATIONS**

A. The Parties agree to produce the following deliverables to DOE Office of Scientific and Technical Information (OSTI):

- (1) an initial abstract suitable for public release at the time the CRADA is executed;
- (2) a final report, upon completion or termination of this CRADA, to include a list of Subject Inventions; and
- (3) other scientific and technical information in any format or medium that is produced as a result of this CRADA that is useful to the Government or the public as specified by and upon request from DOE no later than two years from submission of the final report to OSTI.

The Parties acknowledge that the Contractors have the responsibility to timely provide the above information to OSTI. Furthermore, item (2) above should also be provided to the DOE field office.

B. The Parties agree to secure pre-publication review from one another wherein the non-publishing Parties shall provide within 30 days any written objections to be considered by the publishing Party.

C. The Parties agree that they will not use the name of another Party or its employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this CRADA, without prior written approval of such other Party.

#### **ARTICLE XI: FORCE MAJEURE**

No failure or omission by a Contractor or the Participant in the performance of any obligation under this CRADA shall be deemed a breach of this CRADA or create any liability if the same shall arise from any cause or causes beyond the control of such Contractor or the Participant, including but not limited to the following, which, for the purpose of this CRADA, shall be regarded as beyond the control of the Party in question: Acts of God, acts or omissions of any government or agency thereof, compliance with requirements, rules, regulations, or orders of any governmental authority or any office, department, agency, or instrumentality thereof, fire, storm, flood, earthquake, accident, acts of the public enemy, war, rebellion, insurrection, riot, sabotage, invasion, quarantine, restriction, transportation embargoes, or failures or delays in transportation.

**ARTICLE XII: DISPUTES**

The Parties shall attempt to mutually resolve all disputes arising from this CRADA. In the event a dispute arises under this CRADA, the Participant is encouraged to contact the Contractor's Technology Partnerships Ombudsman for the Contractor involved, in order to further resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to mutually resolve a dispute within 60 days, they agree to submit the dispute to a third-party mediation process that is mutually agreed upon by the Parties. To the extent that there is no applicable U.S. Federal law, this CRADA and performance thereunder shall be governed by the state laws of the locale of a court of competent jurisdiction, without reference to that state's conflict of laws provisions.

**ARTICLE XIII: ENTIRE CRADA, MODIFICATIONS, ADMINISTRATION TERMINATION, AND NO EXCLUSIVITY**

- A. This CRADA with its annexes contains the entire agreement among the Parties with respect to the Statement of Work.
- B. Any agreement to materially change any terms or conditions of this CRADA or the annexes shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.
- C. The Contractors enter into this CRADA under the authority of their prime contracts with DOE. The Contractors are authorized to and will administer this CRADA in all respects unless otherwise specifically provided for herein. Any Contractor's administration of this CRADA may be transferred from that Contractor to DOE or its designee with notice of such transfer to the Parties, and that Contractor shall have no further responsibilities except for the confidentiality, use and/or nondisclosure obligations of this CRADA.
- D. Any Party may terminate its participation in this CRADA upon thirty (30) days written notice to all other Parties. If Article II provides for advance funding, any Contractor may also terminate its participation in this CRADA in the event of failure by the Participant to provide the necessary advance funding to/for such Contractor. If Participant terminates its participation in this CRADA, such termination will also terminate this CRADA in whole. If a Contractor terminates its participation in this CRADA, the CRADA will continue in force and effect as to the Participant and the remaining Contractors unless they otherwise terminate this CRADA.

In the event of termination by any Party as to its participation in this CRADA, each Party shall be responsible for its share of the costs incurred through the effective date of such termination of participation, as well as its share of the costs incurred after the effective date of termination of its participation, and which are related to such termination of participation.

The confidentiality, use, and/or non-disclosure obligations of this CRADA shall survive any termination of this CRADA, whether in whole or just as to one or more Parties, as well as provisions of this CRADA which would naturally survive termination or expiration of this CRADA.

- E. Subject to the provisions contained herein, this CRADA shall not restrict a Party to this CRADA from discussing or performing similar work with a third party.

**Commented [BM6]:** Since we have a separate, multiparty NDA for each HydroGen participant that we want to remain enforceable, I've deleted the supersede language from the CRADA.

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FOR 1<sup>st</sup> CONTRACTOR:

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

FOR 2<sup>nd</sup> CONTRACTOR:

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

FOR 3<sup>rd</sup> CONTRACTOR:

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

FOR PARTICIPANT:

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

EXAMPLE

**ANNEX A**  
**STATEMENT OF WORK**

**A. NON-PROPRIETARY ABSTRACT**

*(Please provide a brief non-proprietary, non-sensitive description of work to be performed under this CRADA for reporting to OSTI. This should not exceed 800 characters)*

**B. PURPOSE**

*(A one or two sentence statement of project purpose.)*

**Reasons for Cooperation:**

*(Briefly describe each party's interests and strengths and how they are complementary with respect to developing the CRADA technology.)*

**C. SCOPE OF WORK**

**Technical Objective:**

*(Describe the technical goals of the project.)*

**Phases/Tasks of the Project, Duration, and Responsible Parties:**

*(Describe the phases/tasks of the project, if appropriate. Identify the individual tasks within each phase (if applicable) in table format. Subtasks may also be included. Subtasks should provide enough detail so that progress can be easily tracked. (See suggested table layout below.) The duration and responsible party for each task/subtask should be listed. In the section following the table, provide a discussion of the objective of the task and the deliverable that will be produced as a result of the task.)*

Phase No.	Task No.	Task Name	Duration (Months)		Responsible Party
			(Start)	(Finish)	

**Task Descriptions and Deliverables:**

Task 1:

Discussion:

Contractors Deliverables:

Participant Deliverables:

Task 2:

[Insert Lab Name] CRADA No. 18-XXX; [Insert Lab Name] No. 18-XXX; [Insert Lab Name] No. 18-XXX

Discussion:  
Contractors Deliverables:  
Participant Deliverables:

Task 3:

Discussion:  
Contractors Deliverables:  
Participant Deliverables:

Task 4:

Discussion:  
Contractors Deliverables:  
Participant Deliverables:

Task 5:

Discussion:  
Contractors Deliverables:  
Participant Deliverables:

Final Deliverable from all Parties is a report addressing objectives and deliverables. Contractors will deliver report to OSTI.

Duration of Entire Project:  
*(Express, in months, the proposed length of the project from start to finish.)*

#### **D. PROPERTY**

*(Can be excluded if no tangible property is expected to be produced or purchased.)*

List any tangible property to be produced or purchased, who will pay for it and who will own it as required under Article III of the CRADA.

**1<sup>st</sup> Contractor:**

**2<sup>nd</sup> Contractor:**

**3<sup>rd</sup> Contractor:**

**Participant:**

**Note:** If any materials or equipment will be transferred out from Contractors to the Participant, a list of all equipment, identify piece, and identifying numbers (serial, etc.) must be identified in the Statement of Work. Contractors' Property Management needs to be notified with a copy of the Statement of Work.

Any questions concerning the government property provided, acquired, or used in the performance of this CRADA should be addressed to the following e-mail address and/or telephone number: [list for each Contractor / "N/A" or remove section if no property being loaned.]

\_\_\_\_\_. In addition, the Property Representative is authorized to

[Insert Lab Name] CRADA No. 18-XXX; [Insert Lab Name] No. 18-XXX; [Insert Lab Name] No. 18-XXX

take any action necessary to comply with the Federal Property Management Regulations, DOE Property Management Regulations, the Contractor Property Management Manual and the terms of the CRADA regarding the appropriate acquisition, use, loss, replacement, transfer or return of government-furnished property/CRADA-acquired property.

**E. TERM, FUNDING AND COSTS**

The Participant's estimated contribution is \$ \_\_\_\_\_. The Government's estimated contribution, which is provided through the Contractors' prime contracts with DOE, is \$ \_\_\_\_\_, subject to available funding. The total value of this CRADA is estimated to be \$ \_\_\_\_\_.

**F. FUNDING TABLE (all \$ in K)**

**Base CRADA**

<b>Funding</b>	<b>Project Year 1</b>	<b>Project Year 2</b>	<b>Project Year 3</b>	<b>Project Year 4</b>	<b>Project Year 5</b>	<b>TOTALS</b>
<b>Government In-Kind</b>						
<b>1<sup>st</sup> Contractor</b>						
<b>2<sup>nd</sup> Contractor</b>						
<b>3<sup>rd</sup> Contractor</b>						
<b>Total Govt.</b>						
<b>Participant</b>						
In-Kind						
Funds-In (incl. FAC)						
<b>Total Participant</b>						
<b>TOTAL CRADA Value</b>						

**G. OFFICIAL AND TECHNICAL POINT OF CONTACT(S):**

**Participant Official POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

**1<sup>st</sup> Contractor Official POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

**2<sup>nd</sup> Contractor Official POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

**3<sup>rd</sup> Contractor Official POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

**Participant Technical POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

**1<sup>st</sup> Contractor Technical POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

**2<sup>nd</sup> Contractor Technical POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

**3<sup>rd</sup> Contractor Official POC:**

Name:  
Address:  
Telephone:  
Wk:  
Cell:  
E-mail:

[Insert Lab Name] CRADA No. 18-XXX; [Insert Lab Name] No. 18-XXX; [Insert Lab Name] No. 18-XXX

**ANNEX B  
BACKGROUND INTELLECTUAL PROPERTY (BIP)**

This CRADA does not grant to any Party any option, grant, or license to commercialize, or otherwise use another Party's Background Intellectual Property. Licensing of Background Intellectual Property, if agreed to by the Parties, shall be the subject of a separate licensing agreement between the relevant Parties. Each Party has used reasonable efforts to list all relevant Background Intellectual Property, but Background Intellectual Property may exist that is not identified. No Party shall be liable to another Party because of failure to list Background Intellectual Property. Relevant BIP to this CRADA includes but is not limited to the following listing, is subject to change, and includes Intellectual Property developed or owned by the Contractors and Intellectual Property developed or owned by the CRADA Participant. CRADA Participants are cautioned that rights to the BIP may be limited by existing encumbrances.

**1<sup>st</sup> Contractor:**

LAB's final BIP review from the IPM/BIP Team is entered here, or "None Expected".

**2<sup>nd</sup> Contractor:**

LAB's final BIP review from the IPM/BIP Team is entered here, or "None Expected".

**3<sup>rd</sup> Contractor:**

LAB's final BIP review from the IPM/BIP Team is entered here, or "None Expected".

In accordance with 35 U.S.C. § 205, the technology and information contained in, or covered by, any above listed unpublished Contractor patent applications, Innovation Reports and ROIs comprise Protected Information. Protected Information means information generated by the Contractor under its DOE Contract, which is marked as its Protected Information and defined in 15 U.S.C. § 3710a(c)(7)(B) to be "a trade secret or would comprise commercial or financial information that is privileged or confidential if it were obtained from a non-Federal party". Contractor Protected Information may also include, by way of example and not limitation, technical data, computer software, drawings, photographs, process information, samples, equipment, specifications, microorganisms and the like.

The Participant agrees to maintain Protected Information as confidential and to use Protected Information only at the Participant's organization in connection with the performance of the Statement of Work.

Upon termination of this Agreement, the Participant agrees to promptly discontinue its use of the above listed Protected Information, and will, at the Contractor's request, return or destroy all remaining Protected Information. In the event a Contractor terminates its participation in this Agreement pursuant to Article XIII of the CRADA herein, the Participant's right to that Contractor's Protected Information listed in this Appendix B will automatically terminate.

**Participant:**

If the CRADA Participant wishes to identify any BIP it should be listed here, or "None Expected".