

**NAWI MODULAR CRADA
STEVENSON-WYDLER (15 U.S.C. 3710a)
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(hereinafter “CRADA” or “Agreement”)**

Among

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
ERNEST ORLANDO LAWRENCE BERKELEY NATIONAL LABORATORY**

**under its U. S. Department of Energy
Contract No. DE-AC02-05CH11231 (hereinafter “The Regents” or “LBNL”)**

And

**XXX DOE Lab under its U.S. Department of Energy Contract
No. XXXX (hereinafter “XXX”)**

And

**XXX DOE Lab under its U.S. Department of Energy Contract
No. XXXX (hereinafter “XXX”)**

**Hereinafter being individually referred to as “Contractor” or jointly referred to as
“Contractors”**

And

**Name of Participant
(hereinafter “Participant”)**

All being hereinafter jointly referred to as the “Parties” or individually as a “Party”.

RECITALS

Whereas the NATIONAL ALLIANCE FOR WATER INNOVATION (“NAWI”), is a U.S. Department of Energy (DOE) Energy Innovation Hub (“Hub”) selected for federal funding under the DOE Office of Energy Efficiency and Renewable Energy (EERE) Advanced Manufacturing Office Funding Opportunity Announcement Number DE-FOA-0001905 for the Energy-Water Desalination Hub (“DOE FOA”);

Whereas the Advanced Manufacturing Office (“AMO”) of the Energy Efficiency and Renewable Energy Office (“EERE”) will provide funding to the Contractors as members of NAWI, for conducting NAWI work, subject to available funding and the following program requirements;

Whereas the Parties are members and have agreed to the rights and responsibilities as outlined in the Consortium Agreement for the National Alliance for Water Innovation (NAWI) including its Operative Documents (collectively referred to as the “Consortium Agreement”) (as amended from time to time);

Whereas the Parties will comply with and conduct work in accordance with the Consortium Agreement;

Whereas in the case of a conflict, this CRADA shall take precedence over the Consortium Agreement.

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 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. "Laboratory Tangible Research Products" or "LTRP" means tangible material results of research that: (i) can be used for replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility; (ii) are not materials generally commercially

available; and (iii) were made by one or more of the Parties in the performance of this CRADA. LTRP includes, without limitation, "Laboratory Biological Materials," which is a biological material that can be replicated or reproduced, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products.

- K. "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)).
- L. "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.
- M. "Subcontractor" means a subcontractor of a Contractor or Participant at any tier.
- N. "Subject Invention" means any invention of a Party conceived or first actually reduced to practice in the performance of work under this CRADA.

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

- A. Annex A, Statement of Work is an integral part of this CRADA.
- B. 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 LBNL. The work to be performed under this CRADA shall be completed within XX months of the effective date.
- C. The Participant's estimated contribution is comprised of \$XXXXX in-kind to LBNL [INSERT AND/OR FUNDING AMOUNT(S) TO ADDITIONAL LABS IF PARTICIPANT IS FUNDING THEM] and \$0 funds-in. The Government's total estimated contribution, which is provided through the Contractors' contracts with DOE, is \$XXXX subject to available funding, and is comprised of the following individual Contractor contributions. Each Contractor's estimated contribution is as follows: XXX's estimated contribution is \$XXXX, subject to available funding; XXXX's estimated contribution is \$XXXX, subject to available funding; and XXXXX's estimated contribution is \$XXXX, subject to available funding. An estimated breakdown of costs is set forth in Annex A, Statement of Work. For CRADAs that include non-Federal funding on a funds-in basis, sufficient advance funds shall be obtained to maintain approximately a 90-day advance of funds during the entire period of work covered by the funds provided by the Participant under the CRADA. 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.
- D. The Parties agree to the financial reporting requirements contained in Annex C: NAWI CRADA In-Kind Contribution Reporting Form. If the Participant becomes reasonably certain that it is unable to meet its estimated contribution, the Participant must notify LBNL immediately.

E. The Parties agree that Contractors and Participant 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 or the Participant under this Agreement and (2) that such agents, consultants or subcontractor(s), including lower-tier subcontractors, agree to comply with the non-use and non-disclosure provisions of this Agreement.

[RESERVE PARAGRAPH F. IF PARTICIPANT IS NOT PROVIDING FUNDING TO LBNL OR OTHER LABS. Choose ONLY ONE version of PARAGRAPH F. based on advance type. Delete the other two.]

Version 1: Full Advance

F. The Participant shall pay LBNL **[INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM]** the following advance payment (Full Advance):

1. **Advance Payment.** The Participant shall advance the following amount at the time shown:

<u>Amount Due</u>	<u>Date Due</u>
\$.	00/00/00

This is a full advance for the estimated cost.

All advance payments must be made in US dollars. For foreign wire transfers, please add \$30 to the invoice amount to cover payment charges levied by the Participant’s banking institution.

2. **Monthly Expense Statements.**

When work commences, monthly expense statements showing actual costs incurred for the month and the balance remaining in the account are mailed to the Participant for information only. The expense statements are not requests for payment.

If the estimated cost is increased during the project or the project is expected to be renewed, an additional advance may be requested of the Participant. LBNL **[INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM]** is not obligated to continue the work unless it is holding an adequate advance.

Upon completion of the project there will be a reconciliation of the total costs incurred to total payments received and a final expense statement along with any remaining advance will be returned to the Participant.

3. The Participant shall provide its Purchase Order number if applicable and the name, address, and other contact information, of the person or department who will be making the invoice payments. This information is mandatory. Any terms and conditions associated with a Purchase Order number are not applicable to this Agreement.

Participant Reference No. if applicable:

Purchase Order No. if applicable:

Contact Name:

Street Address:

City, State, Zip Code:

Country:

Telephone with area code:

Email:

Tax ID Number (TIN):

DUNS Number:

Version 2: Partial Advance

F. The Participant shall pay LBNL [INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM] the following advance payment and monthly invoice payments (Partial Advance):

1. **Advance Payment.** The Participant shall advance the following amount at the time shown:

<u>Amount Due</u>	<u>Date Due</u>
\$.	00/00/00

This is a partial advance for the estimated cost. Once received, this advance will be held to pay for the costs incurred on this agreement after the amounts on the monthly invoices plus the advance payment equals the contractual cost limitation level authorized under this agreement.

All advance payments must be made in US dollars. For foreign wire transfers, please add \$30 to the invoice amount to cover payment charges levied by the Participant’s banking institution.

2. **Monthly Invoice Payments.**

Once each month during the Agreement term LBNL [INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM] shall invoice the Participant for costs incurred in the previous month. Payment for such costs shall be due upon receipt of the invoice.

LBNL [INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM] is not obligated to continue the work unless it is holding an adequate advance and may stop work if the monthly invoices are not paid on a timely basis.

When the advance payment plus the amounts paid in response to the monthly invoices equals the contractual cost limitation, the advance payment will be applied to pay for the remaining costs incurred on the agreement. From that time forth, monthly Expense Statements showing actual costs incurred for the month and the balance remaining in the agreement are mailed to the Participant for information only. The expense statements are not requests for payment.

Upon completion of the project there will be a reconciliation of the total costs incurred to total payments received and a final expense statement along with any remaining advance will be returned to the Participant.

3. The Participant shall provide its Purchase Order number if applicable and the name, address, and other contact information, of the person or department who will be making the invoice payments. This information is mandatory. Any terms and conditions associated with a Purchase Order number are not applicable to this Agreement.

Participant Reference No. if applicable: _____

Purchase Order No. if applicable: _____

Contact Name: _____

Street Address: _____

City, State, Zip Code: _____

Country: _____

Telephone with area code: _____

Email: _____

Tax ID Number (TIN): _____

DUNS Number: _____

Version 3: Scheduled Payments

F. The Participant shall pay LBNL [INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM] the following advance payments (Scheduled Payments):

1. **Payments.** The Participant shall advance the following amount at the time shown:

<u>Amount Due</u>	<u>Date Due</u>
\$.	00/00/00
\$.	00/00/00
\$.	00/00/00

LBNL [INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM] will issue an invoice for the first installment prior to beginning work on the project. In addition, LBNL

[INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM] will issue installment invoices for the remaining installments in accordance with the payment due dates above.

All advance payments must be made in US dollars. For foreign wire transfers, please add \$30 to the invoice amount to cover payment charges levied by the Sponsor’s banking institution.

2. Monthly Expense Statements.

When work commences, monthly expense statements showing actual costs incurred for the month and the balance remaining in the account are mailed to the Participant for information only. The expense statements are not requests for payment.

If the estimated cost is increased during the project or the project is expected to be renewed, an additional advance may be requested of the Participant. LBNL **[INSERT “and/or additional Labs” IF PARTICIPANT IS FUNDING THEM]** is not obligated to continue the work unless it is holding an adequate advance.

Upon completion of the project there will be a reconciliation of the total costs incurred to total payments received and a final expense statement along with any remaining advance will be returned to the Participant.

3. The Participant shall provide its Purchase Order number if applicable and the name, address, and other contact information, of the person or department who will be making the invoice payments. This information is mandatory. Any terms and conditions associated with a Purchase Order number are not applicable to this Agreement.

Participant Reference No. if applicable: _____

Purchase Order No. if applicable: _____

Contact Name: _____

Street Address: _____

City, State, Zip Code: _____

Country: _____

Telephone with area code: _____

Email: _____

Tax ID Number (TIN): _____

DUNS Number: _____

G. 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.C., 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, Proprietary Information, and LTRPs) 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. (Add the following sentence if LTRPs are expected to be generated:) Any LTRPs remaining after the Statement of Work has been completed, shall be distributed equally among any Parties requesting the LTRPs, and title shall vest with the Party to which they are distributed.

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, willful misconduct or omissions of a Contractor and 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 no 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, or 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.

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 that 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 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 Contractor’s Subject Invention. In particular, the Participant shall have the option to obtain an exclusive license to the Contractor’s Subject Invention within a defined field of use on agreed-upon reasonable terms and conditions, including the payment of negotiated license fees and royalties (“Exclusive License Option”). Participant shall notify the Contractor that owns the Subject Invention whether it elects the Exclusive License Option. In the case of a jointly-owned Subject Invention, the Participant shall notify each owning Contractor.
- I. Each Party may use another Party’s Background Intellectual Property identified in Annex B of this CRADA solely in performance of research under 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 (if any) performing 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, at the disclosing Party's expense, to the disclosing Party 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 or subcontractors, 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 or subcontractors 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.

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;
- (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. 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 in 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 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.

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 any Subject Invention or produced through the use of any Subject Invention shall be substantially manufactured in the United States (referred to hereinafter as “the U.S. Competitiveness Provision”). This requirement will be binding on any sub-awardee and any assignee or any entity otherwise acquiring rights to any Subject Invention including subsequent assignees.
- 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.

[COs: per Consortium Appendix H. 2.2, NAWI will be developing early stage technology (TRL2-4) through NAWI funding awards. For such early stage technologies, a clear commercial product or technology may be difficult to identify. In lieu of the U.S. Competitiveness Provision, NAWI members may propose an alternate U.S. Manufacturing Plan with more specific commitments that would be beneficial to the U.S. economy and competitiveness. For example, an applicant may commit specific products to be manufactured in the U.S., commit to a specific investment in a new or existing U.S. manufacturing facility, keep certain activities based in the U.S. or support a certain number of jobs in the U.S. related to the technology.]

- C. In lieu of the U.S. Competitiveness Provision, the Participant may propose an alternate U.S. Manufacturing Plan with more specific commitments that would be beneficial to the U.S. economy and competitiveness.
- D. DOE will review such plans, and will determine at its sole discretion if the more specific commitments would provide a sufficient benefit to the U.S. economy and industrial competitiveness. If accepted, the alternate U.S. Manufacturing Plan together with the specific

commitments will become incorporated into the terms and conditions of this CRADA by an amendment to be executed by the Parties.

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 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.

The Parties acknowledge that The Regents has many foreign employees and students. The Parties agree 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 Parties agree 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 known to be export controlled or to direct Contractor to engage in any transactions that are subject to U.S. sanctions.

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 that would affect the Participant's answers to the previously completed FOCI certification.

The Parties agree to comply with the Export Control plan in the Consortium Agreement.

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. Participant agrees to cooperate and provide all requested reports and documentation to NAWI through The Regents' Project Representative to support The Regents in its periodic reporting to AMO's Technology Manager (AMO TM) regarding The Regents' management, control and

direction of the NAWI Hub and the overall performance of projects in the NAWI Hub.

The Participant shall submit written intermediate reports on the work and any cost share spend as required by The Regents' Project Representative [and/or] the Statement of Work (SOW). [OPTIONAL-Include if the SOW contains any milestone requirements] Written milestone reports must be submitted on the indicated milestone dates within the SOW.

- C. All reports shall fairly and completely describe the efforts applied to and the results obtained toward achievement of objectives of the work. If an objective is not accomplished, such failure shall be fully documented and explained in the report.
- D. The final report shall cover all of the work under this CRADA, and include the following elements: (a) an abstract briefly describing the overall objectives, results, and conclusions; (b) a full statement of each objective, the performance efforts applied, the work objectives achieved, and the Participant's conclusions; (c) a list of any publications or other releases of information, or data developed or maintained, by the Participant through the performance of the CRADA; and (d) any other relevant information. If requested by The Regents' Project Representative, the Participant shall submit a draft copy of the final report for review prior to finalization. The Regents' Project Representative need not approve the Participant's reported conclusions of the research.

The reports shall be submitted to the following recipients at the indicated email or mailing address:

Lawrence Berkeley National Laboratory
Attention: [Intended Recipient; see below]
One Cyclotron Rd., Mail Stop [see below]
Berkeley, CA 94720

<u>Recipient</u>	<u>Mail Stop</u>	<u>Email</u>
Name: _____		_____@lbl.gov
Name: _____		_____@lbl.gov

- E. The Parties agree to secure pre-publication review from one another wherein the non-publishing Party shall provide within 30 days any written objections to be considered by the publishing Party.
- F. Participant shall use best efforts to notify and communicate planned publicity information regarding Participant's Hub activities prior to release. The Participant must provide sufficient notice through The Regents' Project Representative, to ensure that the Hub leadership, including the AMO Technology Manager (TM) and other AMO representatives, are provided the opportunity to participate in Participant-planned Hub events including Hub meetings, key reviews and experiments, and project management and monitoring activities. The Participant must notify NAWI through The Regents' Project Representative a minimum of ten business days before the Hub events and provide all distributed documentation.

- G. 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. The Parties will notify the AMO TM of Hub press releases and use best efforts for notification to the AMO TM of other publicity information regarding the Parties' Hub activities and provide a minimum of five business days to review and offer input.
- H. The Parties are required to include the following acknowledgement and disclaimer (or most recent version thereof as shown on the NAWI website <https://www.nawihub.org/resources>) in publications arising out of, or relating to, work performed under this CRADA, whether copyrighted or not:

Acknowledgment: "This material is based upon work supported by the National Alliance for Water Innovation (NAWI), funded by the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy (EERE), Advanced Manufacturing Office, under Funding Opportunity Announcement Number DE-FOA-0001905."

Disclaimer: "The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government."

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, pandemic, 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 a U.S. State Court of competent jurisdiction of the locale of any of the U.S. Parties to this CRADA, as agreed upon by the U.S. Parties, without reference to that state's conflict of laws provisions.

ARTICLE XIII: ASSIGNMENT OF PERSONNEL

- A. Each Party may assign personnel to the other Party's facility as part of this CRADA to participate in or observe the research to be performed under this CRADA. Such personnel assigned by the assigning Party shall not during the period of such assignments be considered employees of the receiving Party for any purpose.

- B. The receiving Party shall have the right to exercise routine administrative and technical supervisory control of the occupational activities of such personnel during the assignment period and shall have the right to approve the assignment of such personnel and/or to later request their removal by the assigning Party.
- C. The assigning Party shall bear any and all costs and expenses with regard to its personnel assigned to the receiving Party's facilities under this CRADA. The receiving Party shall bear facility costs of such assignments.
- D. **Participating Researchers.** All Participant employees, subcontractors, and affiliates assigned by the Participant for the performance of the research must be identified in the table below. It is understood and agreed that the Participant's key personnel designated below are considered to be essential to the work being performed hereunder and shall not be reassigned or replaced without prior Regents' approval, except where such circumstances are beyond the reasonable control of the Participant. The Participant shall notify The Regents' Project Representative reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the performance of this CRADA. If for any reason any of the participating researchers becomes unavailable or is not able to complete the LBNL affiliate process (<https://hrss.lbl.gov/service-offerings/affiliates/>) as implemented for NAWI at LBNL within six (6) months of the start date of this CRADA, the Participant shall notify The Regents and a mutually acceptable successor shall be assigned. The Regents' Project Representative will facilitate the LBNL affiliate process with Participant personnel identified below in conjunction with the LBNL Site Access Office.

NAME

TITLE

- E. **Conflict of Interest.** As Participant becomes aware, the Participant shall notify NAWI through The Regents' Project Representative within ten calendar days of any significant conflict of interest issues in accordance with the incorporated NAWI Research Consortium Agreement Appendix D – Conflict of Interest Plan.

ARTICLE XIV: LABORATORY SITE ACCESS, SAFETY AND HEALTH

As a precondition to performing work at a Contractor's Laboratory, Participant must complete all Contractor Site Access documents and requirements. 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. Participant must comply with all applicable safety, health, access to information, security and environmental regulations and the requirements of the Department and Contractor(s), including the specific requirements of the Laboratory. In the event that the Participant fails to comply with said regulations and requirements, the Contractor may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of Participant's activities at the Laboratory.

The AMO Technology Manager ("AMO TM") and the AMO TM's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems, if required. The Parties must provide any information, documents, site access, or other assistance requested by AMO and AMO TM's authorized representatives for the purpose of its Federal stewardship or substantial involvement. The Parties must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of AMO TM and

AMO TM's authorized representatives in the performance of their duties. AMO must provide at least 5 business days' notice prior to such site visit reviews along with an agreed upon scope of such site visit review. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

ARTICLE XV: NOTICES

The names, postal addresses, telephone and email addresses for the Parties are provided below. 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 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.

For the Participant:

Contact Name: _____
Postal address: _____

Telephone: _____
Email: _____

For The Regents:

Contact Name: Carol Valladao (The Regents' Project Representative) _____
Postal address: _____

Telephone: _____
Email: _____

For DOE XXXX LAB:

Contact Name: _____

Postal address: _____

Telephone: _____

Email: _____

As the Participant becomes aware, the Participant shall promptly notify NAWI through The Regents' Project Representative of any critical business issues or litigation concerning the Participant and any Consortium members that are part of the Hub activities funded under this CRADA that may have material adverse effect on the Project or individual Hub activities.

ARTICLE XVI: ENTIRE CRADA, MODIFICATIONS, ADMINISTRATION, AND TERMINATION

- A. This CRADA with its annexes contains the entire agreement among the Parties with respect to the subject matter hereof, and all prior representations or agreements relating hereto have been merged into this document and are thus superseded in totality by this CRADA.
- 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 sixty (60) days written notice to the other Party(ies). 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(s). 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 as to just one or more Parties, as well as

provisions of this CRADA which would naturally survive termination or expiration of this CRADA.

ARTICLE XVII: FLOW DOWN REQUIREMENTS

A. Foreign Involvement. Participant agrees that all work under this CRADA must be performed by eligible domestic entities, including its lower-tier subcontractors. To be eligible, all participants, including Consortium Members, lower tier subcontractors, and CRADA Participants, in the Hub must be incorporated (or otherwise formed) under the laws of a State or territory of the United States with majority domestic ownership or control and have a physical place of business in the United States. Entities who do not meet these requirements are considered foreign entities.

Participant agrees to seek and obtain a foreign entity waiver approved by NAWI for any lower-tier subcontractor that is not an eligible domestic entity. The waiver request must follow the process detailed in the incorporated NAWI Foreign Entity Participation Plan as part of the consortium agreement.

All work performed under this CRADA must be performed in the United States unless a foreign work waiver is obtained. The Participant must flow-down this requirement to its collaborators or other entities performing work on its behalf for NAWI or providing cost share, except to a DOE National Laboratory. The Participant shall advise The Regents' Project Representative if the lower-tier subcontractor is proposing to conduct work outside of the United States prior to conducting such work. The Participant is responsible for submitting the required request to NAWI through The Regents' Project Representative for obtaining a foreign work waiver, if applicable.

Participant agrees to comply with Annex D: Foreign Government Talent Recruitment Programs (FG RTP).

B. NAWI Flow Down Requirements. In addition to the other applicable terms contained herein, Participant agrees to flow down NAWI specific program requirements to its lower-tier subcontractors performing research and development and demonstration or providing services specifically identified in the following sections:

- a. RECITALS
- b. ARTICLE I. DEFINITIONS
- c. ARTICLE II: STATEMENT OF WORK, TERM, FUNDING AND COSTS, Paragraph D. Financial Reporting & Notification, Paragraph E.
- d. ARTICLE IV: DISCLAIMER
- e. ARTICLE V: PRODUCT LIABILITY
- f. ARTICLE VI: RIGHTS IN SUBJECT INVENTIONS
- g. ARTICLE VII: RIGHTS IN DATA
- h. ARTICLE VIII: U.S. COMPETITIVENESS

Multi-Lab, Single Participant

National Alliance for Water Innovation (NAWI) CRADA

[Insert Lab Name] CRADA No. XXX; [Insert Lab Name] No. XXX; [Insert Lab Name] No. XXX; [Insert Participant Name]

- i. ARTICLE IX: EXPORT CONTROL
- j. ARTICLE X: REPORTS AND PUBLICATIONS
- k. ARTICLE XIII: ASSIGNMENT OF PERSONNEL
- l. ARTICLE XIV: LABORATORY SITE ACCESS, SAFETY AND HEALTH
- m. ARTICLE XVII: FLOW DOWN REQUIREMENTS
- n. ANNEX A: Statement of Work: any additional Program Requirements identified as required.
- o. ANNEX C: NAWI CRADA In-Kind Contribution Reporting Form (Excel)
- p. ANNEX D: Foreign Government Talent Recruitment Programs (FG RTP)

SAMPLE

Multi-Lab, Single Participant
National Alliance for Water Innovation (NAWI) CRADA
[Insert Lab Name] CRADA No. XXX; [Insert Lab Name] No. XXX; [Insert Lab Name] No. XXX; [Insert Participant Name]

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one and the same instrument.

FOR **<insert lab name>**:

BY _____

NAME _____

TITLE _____

DATE _____

SAMPLE

Multi-Lab, Single Participant
National Alliance for Water Innovation (NAWI) CRADA
[Insert Lab Name] CRADA No. XXX; [Insert Lab Name] No. XXX; [Insert Lab Name] No. XXX; [Insert Participant Name]

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one and the same instrument.

FOR **<insert lab name>**:

BY _____

NAME _____

TITLE _____

DATE _____

SAMPLE

Multi-Lab, Single Participant
National Alliance for Water Innovation (NAWI) CRADA
[Insert Lab Name] CRADA No. XXX; [Insert Lab Name] No. XXX; [Insert Lab Name] No. XXX; [Insert Participant Name]

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one and the same instrument.

FOR **<insert lab name>**:

BY _____

NAME _____

TITLE _____

DATE _____

SAMPLE

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one and the same instrument.

FOR *<insert Participant name>*:

BY _____

NAME _____

TITLE _____

DATE _____

SAMPLE

Annex A: Statement of Work

[PROJECT TITLE]

EXPECTED ACCOMPLISHMENTS AND GOALS

[Describe what products the Participant might be manufacturing or commercializing as a result of the efforts under this CRADA. {If no products can be identified, then state so.}]

TECHNICAL OBJECTIVES

[Provide an explanation of the means of achieving the result/product(s).]

TASKS, RESPONSIBILITIES, AND SCHEDULE

[Summarize the tasks, noting which party is responsible for each task. Explain the relationship between phases, including timing if relevant. Provide a schedule of work in terms of the time needed to complete each milestone and/or phase. You may use the table below, modified for months or quarters as needed.]

Work Done by:				Completion, Quarters After Start of Project															
Task/Milestone	DOE LAB <i>(Insert columns as needed)</i>	LBNL	[Part.]	1	2	3	4	5	6	7	8	9	1	1	1	1	1	1	
													0	1	2	3	4	5	6

DELIVERABLES

[List the items (reports, prototypes, etc.) to be delivered for each phase or task. Give due dates in terms of months from project start and note which party is responsible for each deliverable]

Task:

Discussion:

Contractors Deliverables:

Participant Deliverables:

A. Quarterly report on the progress on your tasks and deliverables.

B. Contribute to any relevant quarterly reports and annual reports for respective tasks and deliverables as requested by The Regents' Project Representative.

TOTAL FUNDING SUMMARY

[Insert section A.5., Funding Table, from the JWS.]

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.]

1st Contractor:

Property Description:

Project Representative Name, Title, Email, Phone

Property Representative Name, Title, Email, Phone

2nd Contractor:

Property Description:

Project Representative Name, Title, Email, Phone

Property Representative Name, Title, Email, Phone

3rd Contractor:

Property Description:

Project Representative Name, Title, Email, Phone

Property Representative Name, Title, Email, Phone

Participant:

Multi-Lab, Single Participant

National Alliance for Water Innovation (NAWI) CRADA

[Insert Lab Name] CRADA No. XXX; [Insert Lab Name] No. XXX; [Insert Lab Name] No. XXX; [Insert Participant Name]

Note: If any materials or equipment will be transferred out from Contractors to the Participant, a list of all equipment 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. This is not intended for MTA items (biological materials, consumables, battery packs). This is for items that would be tagged.

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 Regents' Project Representative is authorized to work with the Contractors' property representative to 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.

SAMPLE

Annex B: Background Intellectual Property

Each Party may use the other Party’s Background Intellectual Property identified in this Annex B solely in performance of research under the Statement of Work. This CRADA does not grant to any Party any option, grant, or license to commercialize, or otherwise use the other Party’s Background Intellectual Property. Licensing of Background Intellectual Property, if agreed to by the Parties, shall be the subject of 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 the other Party because of failure to list Background Intellectual Property.

The Regents’ Background Intellectual Property:

DOE LAB XXX (INSERT AS NECESSARY) Background Intellectual Property:

Participant’s Background Intellectual Property:

SAMPLE

ANNEX C: NAWI CRADA In-Kind Contribution Reporting Form (Excel)

Reporting form can be downloaded at <https://www.nawihub.org/forms>.

Participants may only report actual in-kind contributions for hours worked at the Participant's actual labor and non-labor rates. All costs (including indirect costs) must adhere to the Agreement terms and conditions, Generally Accepted Accounting Principles (GAAP) and the Federal Acquisition Regulations applicable to your organization.

Participants are responsible for retaining all appropriate documentation records for in-kind contributions including all travel receipts, invoices, timesheets, and other appropriate backup information for each type of cost included on the completed form. The participating organization completing the NAWI CRADA In-Kind Contribution Reporting Form may be required to provide additional verification and validation for their in-kind contributions to NAWI, the Contracting Officer, or other cognizant agency as needed or required.

For specific guidelines regarding allowable cost share associated with this program please refer to 2 CFR 200 as amended by 2 CFR part 910.

SAMPLE

ANNEX D: Foreign Government Talent Recruitment Programs (FGTRP)

The Participant must comply with the requirements of this Annex D and prohibit any of Participant's personnel performing work under this CRADA, from the unauthorized transfer of scientific and technical information to foreign government entities through their participation in foreign government talent recruitment programs of countries designated by DOE as a foreign country of risk. Participant must provide a signed certified statement to The Regents annually, based on Participant's due diligence, that none of Participant's personnel working under this CRADA is a participant in foreign government talent recruitment programs of countries designated by DOE as a foreign country of risk. An initial notification and signed certification is due within 30 calendar days after The Regents have signed the CRADA and must state whether or not anyone performing work on this CRADA is, or is believed to be, a participant in a foreign government talent recruitment program of any foreign country of risk (while DOE has identified countries of risk, each participant's FGTRP activity should be disclosed). To the extent corporate resources are made available under the CRADA, the individuals made available as corporate resources must be included in any required notification or reporting by the Participant. This provision does not apply to ministerial corporate resource support (e.g., HR, legal, travel personnel, timekeeping personnel, benefits, etc.).

All notifications and reporting required under this Annex D must be sent to The Regents' Project Representative via email. All positive notifications must include the following information:

1. The name of the government that is sponsoring the FGTRP;
2. The name of the organization or talent recruitment program that the employee is working with;
3. The nature of the employee's responsibilities under this FGTRP;
4. The duration of the employee's commitment under the FGTRP;
5. The amount of compensation the employee(s) is receiving as a result of participating in the FGTRP, and;
6. A complete copy of any agreement that the employee(s) have signed under the FGTRP.

Participant must file quarterly reporting stating whether it or any of its employees, applicable subcontractor employees or joint employees working under this CRADA are or are believed to be participants in a foreign government talent recruitment program of a foreign country of risk. The quarterly reports are due by the first business day of the last month of each calendar quarter (March, June, September and December). The quarterly report must include the following information:

1. Names of any employee found during the previous 3 months who is performing work under this Agreement on or at a DOE or National Nuclear Security Administration (NNSA) site or facility, including DOE or DOE/NNSA Contractor leased space, including any LBNL facility, and who is a participant in a foreign government talent recruitment program of any foreign country of risk;

2. Statement as to whether any of the employees named above were not part of a previously submitted notification, and;
3. The required notification information listed above if not previously submitted.

If The Regents does not receive a statement or report from the Participant by a quarterly reporting deadline, the Participant is certifying that there is no change in disclosure status to report.

During period of performance of this CRADA, Participant must continue to exercise due diligence and annually file reports with signed certifications to DOE on whether there is a reasonable basis to report that any individual on the project team is a participant in a foreign government talent recruitment program of a foreign country of risk. Further, under the Research Consortium Agreement Appendix D – Conflict of Interest Plan, Participant must notify NAWI through The Regents’ Project Representative within five (5) business days upon learning that an individual on the Participant’s project team is or is believed to be participating in a foreign government talent recruitment program of a foreign country of risk.

All individuals on Participant’s project team must submit a signed statement to Participant within the first quarter of Budget Period 1 or within thirty days of joining the project team, which (1) certifies the individual is not a participant in a foreign government talent recruitment program of a foreign country of risk, (2) discloses the individual’s ties to foreign universities, private entities and governments of countries designated by DOE as foreign country of risk, and (3) requires the individual to provide an updated signed statement should the individual’s circumstances change in a manner that would impact the accuracy of the individual’s earlier signed statement. Participant must certify to The Regents that no individuals on their project team are participants in a foreign government talent recruitment program of a foreign country of risk. Upon request by The Regents, the Participant will provide the signed statements submitted by the individuals.