

**STEVENSON-WYDLER (15 USC 3710a)
COOPERATIVE RESEARCH AND DEVELOPMENT
AGREEMENT (hereinafter CRADA) No. _____**

BETWEEN

M&O Contractor

under its U.S. Department of Energy Contract

No. DE-ACXX-XXXXXXXX (hereinafter Contractor)

AND

(hereinafter Participant), both being

hereinafter referred to singularly as “Party” and jointly as “Parties”

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. “Contracting Officer” means the DOE employee administering the Contractor’s DOE contract.
- C. “DOE” means the Department of Energy, an agency of the Federal Government.
- D. “Generated Information” means information, including data, produced in the performance of this CRADA.
- E. “Government” means the Federal Government of the United States of America and agencies thereof.
- F. “Intellectual Property” means patents, trademarks, copyrights, mask works, and other forms of comparable property rights protected by Federal law and foreign counterparts, except trade secrets.
- G. “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)).

- H. “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.
- I. ”Subject Invention” means any invention of the Contractor or Participant 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. The Statement of Work is attached as Annex A.
- 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 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 or (2) the date on which it is approved by DOE. 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 \$_____, of which \$_____ is fund-in to the Laboratory. The Government’s estimated contribution, which is provided through the Contractor’s contract with DOE, is \$_____, subject to available funding.

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 CONTRACTOR 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 OF THE RESEARCH OR RESULTING PRODUCT. NEITHER THE GOVERNMENT, THE PARTICIPANT, NOR THE CONTRACTOR 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

The Parties anticipate that no Intellectual Property will be generated under this CRADA, however, if Intellectual Property is generated, the Participant agrees that all of its Intellectual Property generated under this Agreement will be placed in the public domain (with the appropriate disclaimer). Therefore, a standard Product Liability provision where the Participant would indemnify the Contractor and the Government is not included in this CRADA.

ARTICLE VI: RIGHTS IN SUBJECT INVENTIONS

RESERVED.

ARTICLE VII: RIGHTS IN DATA

The Parties anticipate that no Intellectual Property will be generated under this CRADA, however, if Intellectual Property is generated, the Participant agrees that all of its Intellectual Property generated under this Agreement will be placed in the public domain (with the appropriate disclaimer). Therefore, a standard Rights in Data provision where the Participant would have certain Protected CRADA Information rights is not included in this CRADA.

PROPRIETARY INFORMATION: The Parties agree that no Proprietary Information will be shared between the Parties.

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. The 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.

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.

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 Contractor has 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 each other wherein the non-publishing Party shall provide within 30 days any written objections to be considered by the publishing Party.
- C. The Parties agree that neither will use the name of the other 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 the other Party.

ARTICLE XI: FORCE MAJEURE

No failure or omission by the 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 the 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 jointly resolve all disputes arising from this CRADA. In the event a dispute arises under this CRADA, the Participant is encouraged to contact Contractor's Technology Partnerships Ombudsman in order to further resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to jointly resolve a dispute, any and all litigation involving a Party's rights and duties under this Agreement will be brought in a

court of competent jurisdiction in the state of the defendant Party’s principal place of business. The respective state of the Party’s principle place of business is defined as the State of _____ for the Contractor and the State of _____ for the Participant.

ARTICLE XIII: ENTIRE CRADA, MODIFICATIONS, ADMINISTRATION AND TERMINATION

- A. This CRADA with its annexes contains the entire agreement between 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 Contractor enters into this CRADA under the authority of its prime contract with DOE. The Contractor is authorized to and will administer this CRADA in all respects unless otherwise specifically provided for herein. Administration of this CRADA may be transferred from the Contractor to DOE or its designee with notice of such transfer to the Participant, and the Contractor shall have no further responsibilities except for the confidentiality, use and/or nondisclosure obligations of this CRADA.
- D. This CRADA may be terminated by either Party upon 60 days written notice to the other Party. If Article III provides for advance funding, this CRADA may also be terminated by the Contractor in the event of failure by the Participant to provide the necessary advance funding.

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

AGREED AND ACCEPTED:

M&O CONTRACTOR:

PARTICIPANT:

BY: _____

BY: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____