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- Public Law 99-502, the Federal Technology Transfer Act of 1986, as amended.

**COOPERATIVE RESEARCH AND DEVELOPMENT  
AGREEMENT (hereinafter "CRADA") No. 06-N\_\_\_\_**

**BETWEEN**

**NATIONAL ENERGY TECHNOLOGY LABORATORY  
U.S. DEPARTMENT OF ENERGY (hereinafter "NETL")**

**AND**

\_\_\_\_\_ (hereinafter "Participant")

**both being hereinafter jointly referred to as the "Parties."**

**ARTICLE I: DEFINITIONS**

- A. "Government" means the United States of America and agencies thereof.
- B. "DOE" means the Department of Energy, an agency of the United States of America.
- C. "NETL" is a Government-owned and operated facility engaged in the conduct of energy research and development.
- D. "Laboratory Director" means the Director of NETL, acting in accordance with and under the general and enumerated authority of P.L. 99-502, as amended.
- E. "Generated Information" means information produced in the performance of this CRADA.
- F. "Proprietary Information" means information which 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)), either of which is developed at private expense outside of this CRADA and is marked as Proprietary Information.
- G. "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.

- H. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works distributed to the public, and perform publicly or display publicly in any manner or for any purpose, or to permit others to do so.
- I. "Subject Invention" means any invention of the Parties conceived or first actually reduced to practice in the performance of work under this CRADA.
- J. "Intellectual Property" means patent applications, patents, and other forms of comparable property rights protected by Federal law and its foreign counterparts.

**ARTICLE II: STATEMENT OF WORK**

[INSERT SOW]

**ARTICLE III. TERM AND CONTRIBUTIONS OF THE PARTIES**

- A. The terms of the CRADA, unless otherwise specified, shall remain in effect for \_\_\_\_\_ [STATE PERIOD OF PERFORMANCE], commencing on the date the Laboratory Director signs this agreement.
- B. The estimated value of the Participant's contribution is \$\_\_\_\_\_. The estimated value of the Government's contribution is \$\_\_\_\_\_, subject to available funding.
- C. [For CRADAs which include (non-Federal) funding on a funds-in basis, an advance payment provision will be negotiated consistent with current DOE policy.]

**ARTICLE IV: PERSONAL PROPERTY**

Any tangible personal property produced in conducting the work under this CRADA shall be owned by the Party paying for it. There will be no jointly funded property. Personal property

shall be disposed of as directed by the owner at the owner's expense.

Failure of the Participant to remove its property from federal property will establish a presumption of abandonment under federal property regulations.

**ARTICLE V: DISCLAIMER**

THE GOVERNMENT AND THE PARTICIPANT MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY 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 NOR THE PARTICIPANT SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

**ARTICLE VI: PRODUCT LIABILITY**

Except for any liability resulting from any negligent acts or omissions of the Government, the Participant indemnifies the Government 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, the Government shall not be considered an assignee or licensee of the Participant, as a result of reserved Government rights. The indemnity set forth in the paragraph shall apply only if the Participant shall have been informed as soon and as completely as practical by 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 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 VII: PROPRIETARY INFORMATION**

Each Party agrees to not disclose Proprietary Information provided by the other Party to anyone other than the providing Party

without the written permission of the providing Party, except to Government employees who are subject to 18 U.S.C. § 1905.

**ARTICLE VIII: OBLIGATIONS AS TO PROTECTED CRADA INFORMATION**

- A. Each Party may mark as Protected CRADA Information, as defined in Article I, any Generated Information produced by its employees, and with the agreement of the other Party, mark any Generated Information produced by the other Party's employees.
- B. The Parties will mark the cover of any document containing Protected CRADA Information with the following legend:

"PROTECTED CRADA INFORMATION

THIS DOCUMENT CONTAINS PROTECTED CRADA INFORMATION WHICH WAS PRODUCED ON \_\_\_\_\_ [DATE] UNDER CRADA NO. 06-N\_\_\_\_ AND IS NOT TO BE FURTHER DISCLOSED FOR A PERIOD OF \_\_\_\_\_ [NOT TO EXCEED 5 YEARS] FROM THE DATE IT WAS PRODUCED EXCEPT AS EXPRESSLY PROVIDED FOR IN THE CRADA."

In addition, the Parties will mark each page of the document with the following legend: "PROTECTED CRADA INFORMATION."

- C. For a period of \_\_\_\_\_ [NOT TO EXCEED 5 YEARS] from the date Protected CRADA Information was produced, the Parties agree not to further disclose such Information except:
  - (1) as necessary to perform this CRADA;
  - (2) as provided in Article XI (Reports and Abstracts);
  - (3) to be provided to other DOE facilities with the same protection in place;
  - (4) to existing or potential licensees, affiliates, customers, or suppliers of the Parties in support of 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

(5) as otherwise mutually agreed to by the Parties in advance.

D. The obligations in paragraph C above shall end sooner for any Protected CRADA Information which becomes publicly known without fault of either Party, comes into a Party's possession without breach by that Party of the obligations of paragraph C above, or is independently developed by someone who did not have access to the Protected CRADA Information.

**ARTICLE IX: CESSATION OF OBLIGATIONS REGARDING PROTECTED AND PROPRIETARY INFORMATION**

The obligations relating to the disclosure of Protected CRADA Information and Proprietary Information shall end if any such information becomes inadvertently publicly known or is developed independently by another who did not have access to the information under this CRADA.

**ARTICLE X: RIGHTS IN GENERATED INFORMATION**

A. Right to Use

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 information which is disclosed in a Subject Invention disclosure being considered for patent protection, or marked as being copyrighted, Protected CRADA Information or Proprietary Information.

B. Copyrighted Works

For Generated Information, the Government retains for itself and others acting on its behalf, a royalty-free, non-transferable, non-exclusive, 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, all copyrighted works produced in the performance of this CRADA, subject to the restrictions this CRADA places on publication of Proprietary Information and Protected CRADA Information.

**ARTICLE XI: EXPORT CONTROL**

EACH PARTY IS RESPONSIBLE FOR ITS OWN COMPLIANCE WITH SUCH LAWS AND REGULATIONS.

**ARTICLE XII: REPORTS AND ABSTRACTS**

- A. The Parties agree to produce the following deliverables:
- (1) an initial abstract suitable for public release at the time the CRADA is approved by DOE;
  - (2) other abstracts (substantial changes in scope and dollars occur);
  - (3) a final report, upon completion or termination of this CRADA, to include a list of subject inventions;
  - (4) computer software in source and executable object code format as defined within the Statement of Work or elsewhere within the CRADA documentation.
- B. The Participant agrees to provide the above information to DOE who will provide the information to the DOE Office of Scientific and Technical Information.
- C. Any reports properly marked with a restrictive legend identifying the agreed-to period of withholding from public disclosure shall be used by the DOE for Department use only and shall be asserted to be exempt from the Freedom of Information Act as set forth at 5 U.S.C. 552.

**ARTICLE XIII: RIGHTS TO SUBJECT INVENTIONS**

- A. Each Party shall have the first option to retain title to any Subject Invention solely made by its employees during the work under this CRADA. For joint Subject Inventions made by the DOE and the Participant, the Participant shall have the option of electing to retain title to its undivided rights and, if this option is elected, title to such Subject Inventions shall be jointly owned by the DOE and the Participant.

- B. The Participant acknowledges that the DOE may obtain title to each Subject Invention reported under Article XIV for which a patent application or applications are not filed pursuant to Article XVI and for which any issued patents are not maintained by any Party to this CRADA.
- 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.
- E. The Participant shall have the option to choose an exclusive license for *[SPECIFY THE PRE-NEGOTIATED FIELD OF USE]* for any patents or patent applications made in whole or in part by employees of DOE/NETL under this CRADA. This option shall only be available to the Participant for a period of twelve months after the DOE reports the invention to the Participant or such longer time as may be approved by DOE. The Parties agree to negotiate in good faith to enter a separate mutually agreeable license agreement, including reasonable compensation, commercialization milestones, a U.S. Competitiveness Clause, March-in Provisions and other reasonable terms and conditions. If such license agreement is not completed within one year of initiation of good faith negotiations, the Government reserves the right to grant licenses in any and all possible applications.

**ARTICLE XIV: REPORTS OF INVENTION USE**

The Participant agrees to submit, upon request of DOE, a non-proprietary written report no more frequently than annually on its efforts to obtain commercial utilization of any Subject Invention to which the Participant holds title.

**ARTICLE XV: DOE MARCH-IN RIGHTS**

The Participant acknowledges that the 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).

**ARTICLE XVI: U.S. COMPETITIVENESS**

The Parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy. In exchange for the benefits received under this CRADA, the Parties therefore agree to the following:

- A. Products embodying Intellectual Property developed under this CRADA shall be substantially manufactured in the United States,
- B. 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 U.S., shall not result in reduction of the use of the same processes, services, or improvements in the United States.

**ARTICLE XVII: FORCE MAJEURE**

Neither Party will be liable for unforeseeable events beyond its reasonable control.

**ARTICLE XVIII: TERMINATION**

This CRADA may be terminated by either Party upon thirty (30) days written notice to the other party. Each Party will 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. Any non-use or confidentiality obligations of the CRADA shall survive any termination of this CRADA except under the conditions provided for in Article IX.

**ARTICLE XIX: NOTICES**

- A. Any communications required by this CRADA shall be deemed made if mailed by postage prepaid first class U.S. Mail addressed to the Party to receive the communication as of the day of receipt of such communication by the addressee or on the date given if by verified facsimile. Address changes shall be given in accordance with this Article and shall be effective thereafter. All such communications, to be



considered effective, shall include the number of this CRADA.

B. The points of contact for the Parties are as follows:

NETL

Technical Contact:  
[TBD]  
MS [TBD]  
Department of Energy  
626 Cochrans Mill Road  
P.O. Box 10940  
3610 Collins Ferry Road  
P.O. Box 880  
Pittsburgh, PA 15236-0940  
Morgantown, WV 26507-0880  
Phone: 304/285-[TBD]  
FAX: 304/285-4403  
Phone: 412/386-TBD  
FAX: 412/386-TBD  
E-mail: TBD@netl.doe.gov

Administrative Contact:  
R. Diane Newlon  
MS E01  
Department of Energy  
3610 Collins Ferry Road  
P.O. Box 880  
3610 Collins Ferry Road  
Morgantown, WV 26507-0880  
  
Phone: 304/285-4086  
FAX: 304/285-4403  
Email: newlon@netl.doe.gov

Participant

Technical Contact:

Administrative Contact:

*[TO BE PROVIDED BY THE PARTICIPANT]*

**ARTICLE XX: DISPUTES**

The Parties will attempt to resolve any differences between them that may arise during the course of this CRADA. In the event that a dispute cannot be resolved between the Parties, the matter will be referred to the DOE's Board of Contract Appeals. The Board has established an Alternate Disputes Resolution (ADR) procedure which will be the first approach used in an attempt to resolve the dispute. Upon failure of the ADR process, the matter will be adjudicated by the Board using its regular contracts disputes procedure. In any event, this disputes process will not prevent either Party from terminating this CRADA in whole or in part under Article XVIII of this CRADA.

The construction, validity, performance, and effect of this agreement for all purposes shall be governed by the laws applicable to the Government of the United States.

**ARTICLE XXI: ENTIRE CRADA AND MODIFICATIONS**

- A. This document [*and its Appendices*] represents the entire agreement reached between the Parties in performing the research described in Article II, Statement of Work, and becomes effective on the date the Laboratory Director signs the document.
  
- B. Any agreement to materially change any terms or conditions shall be valid only if the change is made in writing, and executed by the Parties.

FOR DOE:

By

Carl O. Bauer  
Director, NETL

Date

For Participant:

By

Name  
Title

Date