

MULTI-PARTY NONDISCLOSURE AGREEMENT

This Multi-Party Nondisclosure Agreement (“Agreement”) is regarding the HydroGEN Energy Material Network (HydroGEN) laboratory resource network consortium, a program funded under an award by the U.S. Department of Energy to the Parties, hereinafter (“Consortium”), and entered into by:

Alliance for Sustainable Energy, LLC, (“Alliance”), the Manager and Operator of the National Renewable Energy Laboratory (“NREL”) under Prime Contract No. DE-AC36-08GO28308 for the U.S. Department of Energy (“DOE”), located at 15013 Denver West Parkway, Golden, CO 80401;

National Technology & Engineering Solutions of Sandia, LLC (“NTESS”), a limited liability company formed under the laws of the State of Delaware and operator of Sandia National Laboratories (“SNL”) pursuant to Contract No. DE-NA0003525 with the U.S. Department of Energy, and having its principal place of business located at 7011 East Avenue, Livermore, CA 94550;

The Regents of the University of California, through the Ernest Orlando Lawrence Berkeley National Laboratory (“LBNL”) under Prime Contract No. DE-AC02-05CH11231 with the DOE, having an office for business at One Cyclotron Road, Berkeley, California 94720;

Battelle Energy Alliance, LLC (BEA), Management and Operating (M&O) Contractor of the Idaho National Laboratory (INL) under Contract No. DE-AC07-05ID14517 (BEA’s DOE Prime Contract) with the United States (U.S.) Department of Energy (DOE), with principal offices located at 2525 North Fremont Avenue, P.O. Box 1625, Idaho Falls, ID 83415-3898;

Lawrence Livermore National Security (LLNS), LLC, under its Contract No. DE-AC52-07NA27344 with the DOE as Operator of the Lawrence Livermore National Laboratory (“LLNL”), located at 7000 East Avenue, Livermore, CA, 94550;

Savannah River Nuclear Solutions, LLC (“SRNS”) as Managing and Operating Contractor of the Savannah River Site (“SRS”), on behalf of its Savannah River National Laboratory (“SRNL”), under Contract number DE-AC09-08SR22470 with the DOE;

collectively referred to as (“Laboratory Members”);

For the purposes of furthering the Consortium, NREL will administer this Agreement with HydroGEN Partner(s) on behalf of the Laboratory Members and will then distribute the executed Agreement to all Parties.

Laboratory Members and HydroGEN Partner(s) collectively referred to as (“Parties”), or individually referred to as (“Party”);

The Parties wish to discuss information relating to the Consortium with each other for the purpose of addressing the challenges in advanced water splitting technologies, and the DOE as necessary (“Purpose”), and in the course of such discussions, it may be necessary for the Parties to disclose proprietary technical and business information with potentially patentable information, proprietary technical and business information referred to herein as (“Proprietary Information”).

In order to review such Proprietary Information amongst the Parties, and the DOE, the Parties agree to HydroGEN Consortium NDA

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access and use such Proprietary Information only for the stated Purpose of this Agreement. The Parties are willing and able to provide the Proprietary Information to each other under the following terms and conditions:

1. All Proprietary Information conveyed by the Parties shall be identified as "Proprietary Information" or other, similar designation, at the time it is disclosed. The receiving Party's obligations shall only extend to Proprietary Information that is within the scope of the Consortium, appropriately marked, or that is unmarked (e.g. oral and visual disclosures and access to facilities of a disclosing Party) but identified as potentially patentable, business sensitive, or proprietary at the time of disclosure or access, and is designated as Proprietary Information in a written memorandum sent to the receiving Party's representative within thirty (30) days of disclosure or access, sufficiently summarizing the Proprietary Information to enable its identification.

To the extent that the Parties receive or are given access to any identified and marked Proprietary Information, the Parties shall use the same degree of care that they use to protect their own proprietary information or potentially patentable information of a like nature (but no less than a reasonable degree of care) to maintain such information in confidence, to use such information only for the Purpose, to disclose such information only to its employees who need to know the information for the Purpose, and to make no further disclosure of such information without the prior written permission of the disclosing Party. However, because the United States Government has ownership, authority, control, audit and inspection rights over all activities conducted at Laboratory Membership Parties, Proprietary Information may be disclosed to employees of the United States Government who are subject to the U.S. Trade Secrets Act (18 U.S.C. 1905) regarding further disclosure, or to an assignee of the United States Government. Notwithstanding the foregoing, the Parties agree that Proprietary Information may be mutually shared among all Parties.

2. All Proprietary Information provided to the receiving Party shall remain the property of the initial disclosing Party and, upon expiration or termination of this Agreement, shall be returned at the disclosing Party's expense or destroyed/erased as requested, in writing, by the disclosing Party, subject to the receiving Party's right to retain one copy of each such document for record purposes only.
3. The effective date of this Agreement shall be determined by the date the HydroGEN Partner signs this Agreement, or in the case of multiple HydroGEN Partners, the date of the last of the HydroGEN Partners to sign ("Effective Date"). This Agreement shall be in full force and effect for a period of (a) two (2) years from the Effective Date or (b) for the term of the HydroGEN award and any extensions thereto; whichever is later. Any Party may terminate its participation in this Agreement with thirty (30) days written notice to all the other Parties. For (a) five (5) years from the Effective Date of this Agreement or (b) two years from the termination or expiration of the HydroGEN award; whichever is later, receiving Party will not disclose or otherwise make available to any third parties the Proprietary Information, except as otherwise expressly permitted under this Agreement.
4. The obligations of this Nondisclosure Agreement shall not extend or apply to Proprietary Information which now or hereafter (i) is or becomes generally known or available from other sources without obligation concerning its confidentiality; (ii) has been made available by the disclosing Party to others without obligation concerning its confidentiality; (iii) is already available

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to others without obligation concerning its confidentiality; (iv) is independently developed by an employee of the receiving Party having no access to the Proprietary Information; or (v) is required to be released pursuant to law (e.g., federal and state FOIA), regulation, or judicial process, provided however that the receiving Party subject to such requirement must notify, in writing, the disclosing Party as soon as practicable to allow the disclosing Party an opportunity to seek a protective order. In no event will receiving Party be in breach of this Agreement for its good faith compliance with applicable law.

5. This Agreement does not create any obligation upon a Party to provide information to another Party. This Agreement does not create a joint venture, partnership, or other form of business association between the Parties.
6. The Proprietary Information furnished under this Agreement may be subject to the United States export control laws and regulations. Each Party agrees to comply with applicable government export and import laws and regulations.

Some of the Parties intend to conduct their activities as fundamental research under U.S. export regulations, and may have many foreign persons who are students and employees. Accordingly, no Party may transfer to any other Party any information that is known to be export controlled under the International Traffic in Arms Regulations or under the Export Administration Regulations except information that is classified as EAR99.

7. This Agreement shall be governed by and construed in accordance with U.S. Law in a court of competent jurisdiction.
8. The Parties agree that no license, right, or license to the Proprietary Information is granted or implied as a result of its transmission to the Parties.
9. The disclosing Party acknowledges that this Agreement and all information received hereunder by the Laboratory Members may be transferred to the DOE or its respective successor contractor if its Management & Operating Contract is terminated.

Otherwise, no other Party may assign or otherwise transfer its rights or delegate its duties or obligations under this Agreement without prior written consent of all of the other Parties. Any attempt to do so is void.

10. The failure of a Party to enforce a right under this Agreement will not be deemed a waiver of any subsequent right.
11. Disclaimers: EACH DISCLOSING PARTY PROVIDES PROPRIETARY INFORMATION SOLELY ON AN "AS IS" BASIS AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND CONCERNING ITS ACCURACY OR COMPLETENESS.

Neither this Agreement, nor any disclosure of Proprietary Information hereunder, in any way: (i) grants to any Party any rights (except the limited rights expressly set forth in this Agreement) or license under any copyright, patent, mask work, or trademark now or hereafter owned or controlled by the another; (ii) obligates any Party to disclose or receive any Proprietary Information, perform any work, enter into any license, business engagement, or other agreement; (iii) limits any Party from developing, manufacturing, or marketing products or

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services which may be competitive with those of the other Parties; (iv) limits any Party from assigning or reassigning employees in any way; (v) creates any partnership, joint venture, agency, or joint relationship, or authorizes any Party to act or speak on behalf of the other Parties; or (vi) limits any Party from entering into any business relationship with any other parties.

- 12. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information; (2) communications to Congress; (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.
- 13. The Parties acknowledge that this Agreement may be executed in a number of counterparts and the sum of said counterparts shall represent a fully executed document. The Parties further acknowledge that electronically transmitted facsimile signatures are fully binding and constitute a legal method of executing this Agreement. Any reproduction of this Agreement by reliable means will be considered an original of this Agreement.

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EXAMPLE