

## NON-DISCLOSURE AGREEMENT (“NDA”)

By and Among

**The Regents of the University of California, through the Ernest Orlando Lawrence Berkeley National Laboratory (“LBNL”);**

**Sandia Corporation**, a Delaware Corporation (“Sandia”), operator of Sandia National Laboratories under Contract Number DE-AC04-94AL85000 for the DOE;

**Lawrence Livermore National Security, LLC (“LLNS”)**, a Delaware limited liability company, operator of Lawrence Livermore National Laboratory under Contract Number DE-AC52-07NA27344;

above hereinafter referred to individually as a “HyMARC member” and collectively as “HyMARC”

and

**INSERT DOE FCTO AWARDEE** (“Awardee”)

all of the above hereinafter referred to individually as “Party” or collectively as “Parties”

hereby agree:

### ARTICLE I. BACKGROUND

- A. Hydrogen Materials – Advanced Research Consortium (HyMARC) is a consortium of the three Department of Energy (DOE) National Laboratories listed above. It is focused on addressing scientific challenges in the development of viable solid-state materials for storage of hydrogen. HyMARC has tremendous capabilities for the development and characterization of hydrogen storage materials, including multi-scale computational materials design, and development of fundamental understandings of the interaction of hydrogen with materials.
- B. The Awardee was selected for federal financial assistance under a DOE’s Fuel Cell Technologies Office (FCTO) Funding Opportunity Announcement (FOA) seeking proposals for innovative and novel rechargeable hydrogen storage material concepts for use in automotive applications. In accordance with that FOA, the Awardee is required to work collaboratively with the HyMARC on the materials’ development and characterization.

### ARTICLE II. PURPOSE

The purpose of this NDA is to accelerate research via an open exchange of information between the Awardee and HyMARC by establishing a consistent, uniform approach to handling of Proprietary Information, Other Protected Data, and Business Confidential between the Awardee and the different HyMARC members.

### ARTICLE III. DEFINITIONS

- A. "Award" is the federal funding agreement between DOE and the Awardee.
- B. "Generated Information" means information, including data, produced in the performance of the Project.
- C. "Government" means the Federal Government of the United States of America and agencies thereof
- D. "Other Protected Data" means data first produced in the performance of the Award which is marked as being protected from public disclosure or other uses for a particular period time in accordance with the Award. Any data generated by one of three DOE National Laboratories of HyMARC, including data generated from work on the Project, is not considered to be produced in the performance of the Award and will not be treated as Other Protected Data.
- C. "Project" means the collaborative work between Awardee and HyMARC on the materials' development and characterization as required by the Award.
- D. "Proprietary Information" means information, including data, 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 the Award and which is marked as Proprietary Information according to Article IV(B) below.
- E. "Disclosing Party" means a Party who first discloses Proprietary Information and/or Other Protected Data and/or Business Confidential under this NDA.
- F. "Receiving Party" means a Party who receives Proprietary Information and/or Other Protected Data and/or Business Confidential under this NDA.

### ARTICLE IV. SHARING AND THE TREATMENT OF DATA

- A. DATA SHARING: Subject to the non-disclosure and data protection requirements provided herein, the Parties agree to share information with each other as reasonably necessary to achieve the objectives of the Project. The Parties will work with DOE to address any issues regarding the type and nature of data that should be shared for the Project.
- B. PROPRIETARY INFORMATION: Receiving Party agrees to not use Proprietary Information except to the extent required to accomplish the Project and not to disclose Proprietary Information provided by another Party to anyone other than the Awardee, a HyMARC member and a subcontractor to a HyMARC member (if any) performing work for the Project without written approval of the Disclosing 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.

In order for any information to receive protection under this NDA as Proprietary Information, the information must meet the definition of Article I and:

- (1) for information disclosed in writing or other tangible form, be plainly marked as Proprietary Information and shall bear the date of disclosure; or
- (2) for information orally disclosed, the information shall be identified as Proprietary Information, 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 and shall bear the date of disclosure.

All Proprietary Information shall be protected by the Receiving Party for a period of five (5) years from the date of disclosure documented in the marking, unless such Proprietary Information is or becomes publicly known without the fault of the Receiving Party, shall come into the Receiving Party's possession without breach of any of the obligations set forth herein, can be demonstrated by the Receiving Party by written record that it was known to Receiving Party prior to receipt from Disclosing Party, is disclosed pursuant to a court order or applicable law or regulation (with as much advance notice to the Disclosing Party as is reasonably possible under the circumstances), or is independently developed by Receiving Party's employees without use or knowledge of such Proprietary Information.

Proprietary Information in tangible form shall be returned to the Disclosing Party or destroyed with a written confirmation (email will suffice) submitted to the Disclosing Party upon request by the Disclosing Party.

- C. OTHER PROTECTED DATA: The Awardee may designate data delivered to one of three DOE National Laboratories of HyMARC by the Awardee as Other Protected Data provided the data meets the definition of Article I and the data is marked in accordance with the Award. The DOE National Laboratories of HyMARC agree to treat such information in the same manner as Proprietary Information for a period of five (5) years from the date of the initial disclosure of such information to any of the DOE National Laboratories, provided such date is communicated in writing to each Receiving Party at the time such information is disclosed to each Receiving Party.
- D. PROTECTABLE PATENT INFORMATION DATA: To the extent that information is not eligible to be considered Proprietary Information or Other Protected Data and the disclosure of such information will adversely affect the patent rights or interests of the Disclosing Party, the Disclosing Party shall mark such information as being "Business Confidential". The Receiving Party agrees to treat such information in the same manner as Proprietary Information for a period of five (5) years from the date of the initial disclosure of such information to such Receiving Party.

## **ARTICLE V: ENTIRE NDA, MODIFICATIONS, ADMINISTRATION, AND TERMINATION**

- A. This NDA shall become effective on the date the last party signs below ("Effective Date").

- B. This NDA contains the entire agreement between the Awardee and the HyMARC members 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 NDA. No amendment or modification hereof shall be valid or binding upon the Parties unless made in writing and signed by an authorized representative on behalf of each Party.
- C. Except as explicitly provided herein, the intellectual property rights and requirements of the Awardee in the connection with the Project are governed by the Award and the intellectual property rights and requirements of each HyMARC member in connection with the Project are governed its M&O prime contract.
- D. If the Awardee desires further agreement with HyMARC regarding intellectual property rights and other matters associated with the Project, it may negotiate a Cooperative Research and Development Agreement (CRADA), Strategic Partnership Project (SPP), license or other technology transfer agreement with one or more of the HyMARC members.
- E. No license to a Party, under any patent, trademark, copyright, mask work or any other intellectual property right, is either granted or implied by the conveying of Generated Information, Other Protected Data, Proprietary Information or Business Confidential to such Party. None of the Generated Information, Other Protected Data, Proprietary Information, or Business Confidential which may be disclosed or exchanged by the Parties shall constitute any representation, warranty, assurance, guarantee or inducement by a Party to any other Party of any kind, and, in particular, with respect to the non-infringement of patents or any other intellectual property rights, or other rights of third persons or of the Parties hereto.
- F. This NDA shall be in full force and effect for the period of performance of the Award. Each Party may terminate its participation in this NDA by giving thirty (30) days' prior written notice to the other Parties. However, the non-disclosure and data protection requirements of the NDA shall survive for the Confidentiality Period.
- G. This NDA and all information received hereunder by the HyMARC members, may be transferred to their respective successor contractors if their M&O prime contracts are terminated.
- H. Reproduction of this agreement, with all signatures affixed, shall be deemed a duplicate executed original of this agreement.
- I. The Proprietary Information, Other Protected Data, and Business Confidential 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.
- J. In view of its management by an institution of higher education, LBNL intends to conduct its activities as fundamental research under U.S. export regulations, and has many foreign persons who are students and employees. Accordingly, Sandia, LLNS, and Awardee may not transfer to LBNL any information that is export controlled under the International Traffic in Arms Regulations, and may not transfer to LBNL information that is export controlled under the Export Administration Regulations except information that is classified as EAR99.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this NDA as set forth below.

**The Regents of the University of California, through the Ernest Orlando Lawrence Berkeley National Laboratory**

By: \_\_\_\_\_

Name: Matthew Love  
\_\_\_\_\_

Title: Sr. Licensing Associate  
\_\_\_\_\_

Date: \_\_\_\_\_

**LAWRENCE LIVERMORE NATIONAL SECURITY, LLC**

By: \_\_\_\_\_

Name: Nina A. Potter  
\_\_\_\_\_

Title: IP and Agreements Management  
\_\_\_\_\_

Date: \_\_\_\_\_

**SANDIA CORPORATION**

By: \_\_\_\_\_

Name: Robert Hwang  
\_\_\_\_\_

Title: Director  
\_\_\_\_\_

Date: \_\_\_\_\_

**AWARDEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_