

CONSORTIUM AGREEMENT

Among

**BATTELLE ENERGY ALLIANCE
BOISE STATE UNIVERSITY
IDAHO STATE UNIVERSITY
UNIVERSITY OF IDAHO**

For the

CENTER FOR ADVANCED ENERGY STUDIES

CONSORTIUM AGREEMENT
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CONSORTIUM AGREEMENT

AMONG BATTELLE ENERGY ALLIANCE, BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, AND UNIVERSITY OF IDAHO

FOR THE CENTER FOR ADVANCED ENERGY STUDIES

This Consortium Agreement is entered into by and among Battelle Energy Alliance, Boise State University, Idaho State University, and the University of Idaho.

RECITALS

WHEREAS, the Center for Advanced Energy Studies ("CAES") is a consortium that performs world class advanced energy research and education to address, from a scientific and technical perspective, problems that are critical to the Nation;

WHEREAS, CAES currently has a primary physical location at University Place in Idaho Falls, Idaho, ("CAES Building"); however, CAES activities may take place at locations other than the CAES Building;

WHEREAS, the CAES founding members are: Boise State University ("BSU"), Idaho State University ("ISU"), the University of Idaho ("UI"), and Battelle Energy Alliance ("BEA") which manages and operates the Idaho National Laboratory ("INL") for the U.S. Department of Energy (DOE) under BEA's DOE Management and Operating Contract No. DE-AC07-05ID14517, with all the heretofore named entities hereafter referred to as "the CAES Members;"

WHEREAS, the CAES Members entered into a Memorandum of Agreement (MOA) last dated January 25, 2006, which described the Members' intentions regarding the establishment of CAES;

WHEREAS, ISU and BEA entered into Lease Agreement No. 00049377 regarding the CAES Building in October 2006;

WHEREAS, the CAES Members entered into a Tenant Use Agreement for use of the CAES Building in February 2009;

WHEREAS, the CAES Members have drafted a Strategic Plan in September 2011 that sets forth the CAES Members' missions and goals for CAES;

WHEREAS, CAES has now been successfully established and is actively in pursuit of the mission and goals of CAES as described in the Strategic Plan, MOA, and other supporting documents; and

WHEREAS, the CAES Members now desire to enter into this Consortium Agreement (also referred to as Agreement) to formalize the CAES Members' collaborative efforts regarding CAES and describe the respective responsibilities and roles of the CAES Members.

NOW, THEREFORE, in recognition of the mutual benefits of CAES and of the consideration provided herein, the CAES Members mutually agree as follows:

Article 1: CAES Consortium

1.1. Purpose and Precedence of Agreement. This Consortium Agreement is the primary governing agreement for the collaborative effort among the CAES Members regarding the operation of CAES as a consortium. To the extent there is any conflict between this Agreement and the MOA, this Agreement supersedes the MOA. The CAES Members also have entered into a Tenant Use Agreement, dated February 4, 2009. ISU and BEA also have entered a Lease Agreement (Lease) for the CAES premises, which has been acknowledged and consented to by UI and BSU, and which incorporates the Tenant Use Agreement. To the extent possible, these documents all shall be interpreted together with the same meaning given to all terms. In the event of a conflict, the order of precedence shall be the Lease, the Tenant Use Agreement, and this Consortium Agreement. Subsequent agreements entered into between the CAES Members shall not be subject to this Agreement, unless otherwise specifically stated in such agreements.

1.2. CAES status. CAES is a collaborative effort of the CAES Members. CAES is operated pursuant to the legal authority of each CAES Member; CAES does not have standing as a separate legal entity. Furthermore, CAES Members shall not engage in activities under this Agreement that could result in the formation of an informal partnership among any or all of the CAES Members. Furthermore, no CAES Member is an agent of another CAES Member solely by way of this Agreement. However, there is a potential that one or more of the university CAES Members may be able to act as an agent, or on behalf of, to at least some extent, of one or more of the other university CAES Members, but not BEA, by way of a properly executed separate instrument such as an appropriate and duly executed Joint Powers agreement.

1.3. Organizational Structure.

1.3.1. CAES Director. The CAES (Director) shall be an employee selected from any of the CAES Members by the CAES Members consulting and reaching mutual consent on the selection by way of the Steering Committee, or other designee of each CAES Member. However, a Director who is not a BEA employee shall not have authority to manage INL/BEA assets or resources. The Director is accountable to the CAES Steering Committee, is responsible for coordinating the CAES Members' activities, is responsible for overseeing the operation of CAES, and is responsible for coordinating the activities of the CAES Members with respect to CAES in general. The Director may delegate specific responsibilities to one or more Associate Directors. In carrying out the responsibilities of the Director, the Director shall seek the consensus of the CAES Members with accountability to the CAES Steering Committee;

however, to the extent circumstances require, the Director shall have reasonable discretion in making decisions regarding CAES and the operation of CAES subject to applicable laws, regulations, and contractual commitments of the CAES Members. The primary duties of the Director include the following:

- Lead, develop, oversee implementation of the CAES Strategic Plan in consultation with the Steering Committee,
- Lead regular reviews of CAES programs and CAES program strategies and develop options for modifications thereof,
- Consult with the university CAES Members regarding the appointment of their respective Associate Director positions,
- Serve as primary liaison and coordinator for engaging commercial and industrial entities to have work performed at CAES and/or collaborate with CAES Members in order to perform research and development work,
- Oversee the operations and activities of CAES according to the policies and procedures approved by the CAES Steering Committee,
- Develop, in collaboration with the other CAES Members, operational policies for CAES, for approval by the CAES Steering Committee,
- Develop and present an annual budget and an annual report to the CAES Steering Committee,
- Identify, obtain, and leverage new funding sources for supporting and creating CAES programs,
- Implement and annually update the CAES Strategic plan, and
- Oversee CAES programs.

1.3.2. CAES Associate Director(s) – INL/BEA. On an on-going basis, if the Director is an employee of BEA, BEA shall not in addition designate a BEA employee or employees as INL/BEA Associate Director(s). However, if the Director is not a BEA employee, BEA shall designate one or more employees as INL/BEA Associate Director(s). The INL/BEA Associate Director(s) shall assist in the responsibilities of the Director with particular respect to the operations of the CAES Building and BEA compliance with the terms of Lease Agreement No. 00049377 as well as, but not limited to the following:

- Identify and obtain substantial research programs that align with the CAES Strategic Plan,
- Work collaboratively to build sustained student networks benefitting the respective strategies of CAES collaborators,
- Provide oversight of INL/BEA's CAES resources and assets including INL/BEA's CAES-related operating budgets and human capital strategies,
- Support and provide leadership (particularly from an INL perspective) in implementing the CAES Strategic Plan,
- Provide technical and strategic leadership of INL's Lab Directed Research and Development portfolio pertaining to CAES,

- Manage INL's CAES-related professional and leadership development budget,
- Support INL's CAES-related performance assurance activities,
- Identify and avoid or mitigate performance, reputation, and potential liability related risks which may arise from CAES activities and operations,
- Support INL cross cutting initiatives involving CAES,
- Assist in the development and coordination of CAES activities,
- Actively support and participate in commercial and industrial efforts,
- Coordination of commercial and industrial efforts for which Director is responsible, and other duties as may reasonably be delegated by the Director.

1.3.3. CAES Associate Directors - Universities. Each of the other CAES Members: UI, ISU and BSU, shall each designate respective university Associate Director or Directors for CAES. The university Associate Director positions for each university CAES Member shall be funded via mutually acceptable written agreements between the parties thereof. Each university CAES Member shall hire the university Associate Director or Directors for its institution, in consultation with the CAES Director and BEA CAES Associate Director; the respective university Associate Director shall be an employee of the hiring institution. The university Associate Directors shall be responsible for coordinating CAES activities at their respective institutions; however, except as delegated by the Director, the university Associate Directors do not have decision making authority for general CAES Building operations. The university Associate Directors shall be accountable to the CAES Director for the fraction of their time supported by their respective mutually acceptable written agreement between the parties thereof. The university Associate Directors' primary duties may include the following:

- Identify and obtain substantial research programs that align with the CAES Strategic Plan,
- Work collaboratively to build sustained student networks benefitting the respective strategies of CAES collaborators,
- Recruit CAES Investigators,
- Serve as CAES program leads for their respective university and participate in the daily operational decisions for CAES,
- Assist in the development and coordination of CAES activities,
- Hire and supervise administrative staff for their respective university at the CAES site,
- Develop and manage CAES site budgets,
- Actively support and participate in commercial and industrial efforts,
- Direct CAES educational, training, and research activities for their respective university,
- Provide an annual financial report for the previous fiscal and reporting year to the Director of expenses and funds available to the Associate Director for CAES activity,
- Serve as the contact person for their respective university regarding the undertakings and obligations set out in this Agreement,
- Support and provide leadership (particularly from the perspective of their respective university) in implementing the CAES Strategic Plan,

- Identify and avoid or mitigate performance, reputation, and potential liability related risks which may arise from CAES activities and operations, and
- Coordination of commercial and industrial efforts for which Director is responsible, and other duties as may reasonably be delegated by the Director.

1.3.4. Steering Committee. The Steering Committee shall consist of one representative from each CAES Member and one *ex officio* member. The representative from each of the university CAES Members shall be the Vice President for Research, or equivalent for that university institution, unless otherwise designated in writing by that university institution. The Steering Committee will be chaired by the INL Deputy Laboratory Director of Science and Technology. The CAES Director shall serve as an *ex officio* member of the CAES Steering Committee. The Steering Committee shall have strategic oversight for CAES, including setting or revising the mission, developing a strategic plan, and providing policy oversight and scientific direction. The Steering Committee shall approve all policies, procedures, and guidelines as are necessary for the conduct of CAES as a consortium and its common operations. The Steering Committee shall conduct an annual review of the CAES Director, and which the respective employing CAES Member shall take into consideration when performing its annual employee review of the CAES Director. The Director and the CAES Steering Committee may jointly form *ad hoc* advisory committees as needed for scientific advice and/or other assistance.

1.3.5. Executive Board. The CAES Executive Board (CEB) is comprised of the Director, BEA Associate Director[s], and the university Associate Directors from BSU, ISU and UI, with one vote allocated to each university CAES Member as follows:

- The Director is a voting member and serves as the Chair.
- The BEA Associate Director[s] shall vote (to the extent of one vote for BEA irrespective of the number of BEA Associate Directors appointed by BEA), provided that during any term when the Director is a BEA employee, the Director (not the BEA Associate Director[s]) shall hold the voting privilege for BEA.
- The university Associate Director[s] of each member university institution are voting members of the CEB (to the extent of one vote per member institution, irrespective of the number of Associate Directors appointed by such member institution, and the Director shall hold the vote for the Director's institution), provided that during a term when the Director is the employee of a member institution, the Director (and not the Associate Director[s] of such member institution) shall hold the voting privilege for such member institution.

Voting ties shall be resolved via the dispute resolution mechanism under Section 4.9 of this Consortium Agreement.

The CEB provides operational oversight for all CAES activities, including Industry Collaborations. The CEB will meet no less than quarterly. The CEB provides direction and

leadership, with specified decision making authority, for commercial and industrial efforts, convenes and disbands committees as deemed necessary to facilitate CAES activities, and monitors all programmatic and financial activities of CAES. The CEB shall keep records of its meetings and individual votes of the CEB Members with respect to funding decisions, or otherwise shall be recorded, and records retained by the Director.

1.4. Limitations of authority granted herein. All authority granted in this Agreement is subject and subservient to the controlling authority of each CAES Member, other research sponsors, the CAES Members' contracts with the U. S. Government, including BEA's DOE management and operating contract, agreements and subcontracts entered into by BEA thereunder with the other CAES Members or non-CAES Member entities, and to any superseding statutory or regulatory requirements.

1.5. CAES Building. CAES is housed at the premises described in the Lease Agreement and/or subsequent lease agreements as may be entered into by the CAES Members regarding CAES. Use of facilities within the CAES Building shall be as described in the Lease Agreement and the Tenant Use Agreement. CAES Members will cooperate by building capability and by sharing access to their scientific facility resources within the CAES Building as appropriate and at their discretion, consistent with the intent to provide researchers employed by CAES Members, and from other institutions as invited and permitted, to have the greatest available access to the facilities in the CAES Building and to the intellectual community interactions created by the CAES Members.

Article 2. Financial Management.

2.1. Principles of Financial Management. CAES Members shall work together to foster a positive collaborative and research friendly culture by endeavoring to use, develop, and maintain cost effective processes and exercise sound judgment in the use of separate agreements that are appropriate and/or as may be required for the CAES Members to perform work, meet invoicing and payment obligations, and to otherwise properly receive, manage, and transfer funds among the CAES Members and non-CAES member parties in the furtherance of CAES in light of all known applicable laws, regulations, contractual commitments and obligations, accounting principles, and policies of the CAES Members.

2.2. CAES Fiscal Year. The operation of CAES shall generally be reported on a fiscal year beginning on October 1 and ending September 30.

2.3. Budget. Each CAES Member shall be responsible for setting its respective and the annual collective CAES budget in accordance with the CAES fiscal year.

2.4. Financial Record Keeping. The CAES Members shall maintain a complete file of all material records, documents, communications, and other materials in accordance with their normal respective practices that pertain to financial transactions under this Agreement for a

period of three (3) years from the date of final payment, unless the award documents or controlling agreements require records be retained for a longer period.

2.5. Audit. All audits between the CAES Members will be in accordance with the relevant funding agreement(s), or other agreement(s), for the subject transaction(s) of each audit that may be conducted among, or on behalf of, the CAES Members.

2.6. Conducting, Funding, and Accounting of Transactions between CAES Members and with non-CAES Member entities. The following non-exhaustive listing provides exemplary and representative agreements that may be available and suitable for use by the CAES Members to conduct work, perform research and development, exchange confidential/proprietary information, and/or provide other goods or services among the CAES Members and non-CAES Member entities. It is envisioned the CAES Members will periodically update and provide each other current copies of such template agreements or representative agreements for reference as may be deemed useful and beneficial. It is understood by the CAES Members such template agreements may not be suitable as drafted and thus may require editing or modification to be mutually suitable by the parties contemplating entering into such agreements in light of the nature of the subject transaction and other factors.

Titles of Exemplary University Agreements:

University of Idaho Sponsored Research Agreement (UI SRA) – For Federally or Non-Federally Funded research by UI on behalf of a Sponsor

University of Idaho Research Services Agreement (UI RSA) – For provision of research-related services to Federal or Non-Federal entities.

University of Idaho License Agreement (UI License) – For licensing by Sponsor or other parties of UI intellectual property rights.

University of Idaho Non-Disclosure Agreement (UI NDA) – For protection of UI and/or Sponsor confidential (non-classified), proprietary, business sensitive, and other non-publically available information with no funding and no obligation to perform work

UI Material Transfer Agreement (UI MTA) – For non-monetary transfer of proprietary research material(s) into or out of UI and maintenance of provider ownership and intellectual property rights in the transferred material(s).

Boise State University Sponsored Research Agreement – for funded research or research-related activities performed by BSU on behalf of a sponsor.

Boise State University Service Agreement – for provision of BSU services to a sponsor.

Boise State University Short Form Sponsored Project Agreement – for funded activities performed by BSU on behalf of an industry member.

Boise State University Contract for Services – for provision of services by vendors on behalf of BSU.

Boise State University Option Agreement – for use in connection with an option to BSU intellectual property rights.

Boise State University Exclusive License Agreement – for use in connection with an exclusive license of BSU intellectual property rights.

Boise State University Non-exclusive License Agreement – for use in connection with a nonexclusive license of BSU intellectual property rights.

Boise State University One-way Nondisclosure Agreement – for protection of BSU proprietary information.

Boise State University Mutual Nondisclosure Agreement – for mutual exchange and protection of proprietary information.

Titles of Exemplary Federal and State Grant Agreements:

None listed - the CAES Members understand and agree not to accept terms that may introduce problems for compliance, are at odds with governing policies, or unnecessarily reduce the possibility for collaboration between the members.

Titles of Exemplary INL (DOE M&O Contractor) Agreements:

Subcontract - Primarily Federally funded, can be Non-Federally Funded in certain circumstances

Work for Others (WFO) Agreement – Federally and Non-Federally funded research and development on behalf of a Sponsor

Cooperative Research and Development Agreement (CRADA) – For collaborative Federally and non-Federally funded research and development with a Participant

Joint Appointment Agreement – Federally and non-Federally funded employee appointments from a home institution to a receiving institution

National User Facility Agreement – Generally no funding, however, can potentially be Federally funded via a separate Subcontract in certain circumstances

Non-Disclosure Agreement – Obligations to protect confidential (non-classified), proprietary, business sensitive, and other non-publically available information with no funding and no obligation to perform work

Agreement to Commercialize Technology – Somewhat similar to Work For Others Agreement with potential to more flexibly negotiate mutually acceptable terms and conditions under certain circumstances

2.7. Periodic Settlement of Accounts Between the CAES Members. The CAES Members each acknowledge the need for the collaborative efforts of all CAES Members to be enhanced by establishing mutually agreed mechanisms to aid in the CAES operations through common and/or shared efforts and common and/or shared expenses for labor, services or material needs among the CAES Members and incidental to the overall operations of CAES. The CEB and the Director shall be responsible for identifying these commonalities and establishing the appropriate mechanisms and means for addressing them. These mechanisms and means may include shared expenses for the routine and normal operation of CAES including, for example, expenses incurred by a CAES Member to provide administrative and incidental services or materials to one or more of the other CAES Members to further the day-to-day activities being conducted at the CAES Building, or in furtherance of CAES, in accordance with this Agreement and agreed upon periodic settlement of accounts arising from such common and/or shared expenses. The Director shall report the progress in this area to the Steering Committee at each Steering Committee meeting until the Steering Committee determines otherwise.

Article 3: Member Obligations.

3.1. General Obligations. CAES Members agree to develop CAES as a national research and education center, consistent with the CAES Strategy and Mission and with the respective missions of the CAES Members. Each Member has the responsibility to work actively towards fulfilling the CAES Strategy and Mission and to cooperate with each other in the furtherance of CAES. Such responsibilities include, but are not be limited to, the following activities:

3.1.1. Seek opportunities for collaboration on research projects, including projects that will use CAES Membership resources;

3.1.2. Participate in educational and research activities designed to accomplish the CAES Mission;

3.1.3. Share research and education resources as appropriate;

3.1.4. Lead and participate in CAES efforts to secure funding in support of CAES activities, and work together to develop sustainable funding mechanisms for CAES;

3.1.5. Make available and share space within the CAES Building while working with the other CAES Members as appropriate and to the extent available, for CAES located staff, equipment and visitors; and

3.1.6. Manage the respective resources each CAES Member commits or makes available to CAES efforts and projects, including but not limited to, resources such as human capital, financial capital, tangible property, intangible property such as intellectual property.

3.2. Research Proposals. Each CAES Member shall coordinate through its Office of Sponsored Programs, applicable INL Directorate, or the appropriate alternative, to submit any funding proposal, whether private or public, that proposes to do work at CAES or under the auspices of CAES, to the CAES Director for review and approval. The Director shall review all such proposals prior to submission, for the sole purpose of determining whether the proposed research fits within the CAES mission and can be conducted through CAES in light of other obligations and compliance considerations. The Director, in consultation with the Associate Directors, may disallow proposed CAES research that is inconsistent with the CAES mission or that may not be accommodated based on other obligations or compliance considerations. Any decision by the Director to disallow proposed research shall be provided in writing to the CAES Member proposing the research and referred to the CEB for a vote.

3.3. Research Compliance.

3.3.1. Subject matter of the research. Each CAES Member shall be responsible for all local, state and federal compliance obligations relating to the subject matter of the research or work conducted by its employees. Compliance obligations, which may be subject to other written arrangements among the CAES Members, include but are not limited to compliance with laws relating to export controls, biohazards, animal care and use, radiation safety, human subjects, and use, storage, and transport of hazardous substances.

3.3.2. Location of the research. For all research conducted in the CAES Building, CAES Members and their visitors shall comply, at a minimum, with all applicable health, security, and safety requirements, policies and guidelines.

3.3.3. Compliance violations. Any CAES Member with reason to believe that any individual within the CAES Building is acting in violation of applicable compliance requirements, is engaging in scientific misconduct or other misconduct, shall notify the employer of the individual, through the Director or appropriate Associate Director. The Director or the respective Associate Director may, if determined to be necessary in the interest of health and safety, order that the non-compliant or misconduct activity halt immediately until the activity can be appropriately investigated. Any such investigation shall be conducted in accordance with the applicable policies of the home, e.g. employer, CAES Member institution.

3.4. Intellectual Property.

3.4.1. Ownership. Ownership of intellectual property, including but not limited to patent rights, copyrights, trademarks, and trade secrets, which are conceived, reduced to practice, and/or created as a result of this Agreement, or as a result of work or other activities being performed at CAES or in association with CAES, shall be governed by applicable federal and state laws and applicable agreements, including but not limited to, as applicable: BEA's DOE management and operating agreement, funded and unfunded research agreements, sponsored agreements and grants, cooperative agreements, employment/employee agreements, joint appointment agreements, subcontracts, non-employee visitor agreements, loaned employee agreements, intellectual property assignments, intellectual property management agreements, and other written agreements under which such intellectual property is specifically the subject of or was actually or constructively created/reduced to practice thereunder. In any case, this Agreement shall not, in and of itself, govern intellectual property ownership, licensing, or management of intellectual property among or between the CAES members, their employees, or others except regarding the use of the CAES name, logo, and marks by the CAES Members as set forth below in Article 3.6.

3.5. Personal Property.

3.5.1. Ownership. CAES Members shall retain ownership or possession of the personal property each Member brings to the CAES Building and acquires during its occupancy. Ownership or possession of personal property acquired with public or private funds shall be in accordance with the policies of the home institution of the principal investigator and as supplemented by the terms of the applicable research, funding, or other agreement. Each Member shall be responsible for adequately insuring its personal property, and for transporting, maintaining, and disposing of its property.

3.5.2. Donated property. All personal property donated for CAES Member or CAES purposes shall be donated to a specific CAES Member and that Member will own the donated property and, subject to any gift restrictions in the donative documents, operate it as a gift restricted to use for purposes consistent with the CAES mission, for so long as such use is feasible.

3.5.3. Permission for major scientific apparatus. A CAES Member may not bring a major scientific apparatus property item into the Building without the approval of, and coordination with, the CEB. A "major" scientific apparatus as used herein refers to any item determined by the CEB to have a significant impact on space allocation, operating costs, suitability, or functionality for the CAES Building, and includes by way of example, but is not limited to, items such as a mass spectrometer, an electron microscope, a large centrifuge, a NMR spectrometer, diffractometer, or the like. A CAES Member (or team of CAES Members) who brings a major scientific apparatus to the CAES Building shall be responsible for the maintenance and upkeep of such item, for safe operation of the item, including any necessary

training and safety measures, and for managing the use of the item in accordance with applicable requirements.

3.5.4. Use of major scientific apparatus. CAES Members who bring a major scientific apparatus to the CAES Building shall, to the extent possible, operate apparatus for the shared benefit of CAES Members. For such items of shared use, the owning Member shall be responsible for establishing a re-charge cost recovery center with approved use rates in accordance with applicable state and federal requirements. Such items will be dedicated first for use in completing the respective scope of work, second to CAES Member investigators for use in conducting other CAES projects, and third to other faculty/staff of the CAES Members.

3.6. Use of CAES name, logo and marks. The CAES name, logo, trade and service marks, and the goodwill associated therewith as they exist and are either collectively or individually used by the CAES Members at the time of execution of this Agreement and thereafter, shall be considered the jointly held property of the CAES Members (and subject to BEA's DOE Contract with respect to BEA's ownership interest). CAES Members agree to use the CAES name, logo, and marks only in association with the CAES building, mission, and activities as mutually envisioned and as mutually agreed upon by the CAES Members in this Agreement or other duly executed mutually acceptable agreements. In no case may the CAES name, logo, marks, and associated goodwill be used for non-CAES oriented and benefitting purposes, nor may a single or less than all CAES Members authorize or license use of the CAES name, logo, or marks by a non-CAES Member entity without the expressed written permission of each of the CAES Members. The use of the CAES name, logo, marks, and the associated goodwill thereof by each CAES Member under and in accordance with this Consortium Agreement, but not including licensing or sublicensing of non-CAES Member entities, will be without accounting to the other CAES Members.

3.7. Hold Harmless. Each CAES Member, to the extent not prohibited under applicable federal and state laws, shall hold free and harmless, with no obligation to indemnify whatsoever, each of the other CAES Members against claims, suits, causes of actions, expenses, damages, and liabilities, known and unknown, and including legal expenses and attorneys fees, incurred for or on account of any injury, loss, or damage arising out of or in connection with this Agreement to the extent such injury, loss, or damage results from the other CAES Member(s) engaging in negligence, willful misconduct, or a breach of a material term of this Agreement. It is acknowledged each CAES Member may have and may enter into separate written agreements relating to the subject matter of this paragraph.

3.8. Organizational Conflicts of Interest. Each CAES Member will endeavor to avoid or appropriately mitigate personal and organizational conflicts of interest with respect to work contemplated to be performed at CAES and in connection with CAES in accordance with the procedures and practices of the respective CAES Member. Should a potential or actual personal conflict of interest or organization conflict of interest be identified that is not mutually resolvable by the relevant CAES Members within one (1) calendar month of being identified,

such will be resolved in accordance with Section 4.9. Dispute Resolution, unless otherwise agreed in writing by all of the CAES Members.

3.9. Export Compliance. Each CAES Member is responsible to ensure the proper identification, access, control and disposition of all commodities, technology, technical data and items subject to export control laws. These laws include, without limitation, the Arms Export Control Act, the Export Administration Act, the International Economic Emergency Powers Act, the Atomic Energy Act, the Nuclear Non-Proliferation Act and regulations issued pursuant to these including the Export Administration Regulations (EAR) (15 CFR Parts 730-774), the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), and the Nuclear Regulatory Commission and Department of Energy export regulations (10 CFR Parts 110 and 810). The CAES Members 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 governmental authorization may result in criminal and/or other liability. Each CAES Member agrees that it will not export, re-export or otherwise transfer, directly or indirectly, commodities, technology or technical data in violation of U.S. export control laws and regulations. Each CAES Member is fully responsible for its own compliance with laws and regulations governing export controls in the performance of this Agreement and acknowledges that it can contact the U.S. Departments of Commerce, State, Energy and Treasury for guidance as to applicable licensing requirements and other restrictions. This Agreement does not provide any express or implied Governmental export authorization or export license.

3.10. Confidentiality.

3.10.1 Upon mutually identified reasons for CAES Members and/or non-CAES Member entities to agree in writing to protect confidential (non-classified), proprietary information, or other business sensitive non-publicly available information or materials regarding CAES Members performing CAES activities that are not addressed and subject to other written agreements, the CAES Members shall negotiate separate specific agreements, such as by way of a non-disclosure agreement containing mutually acceptable terms and conditions.

3.10.2 In the absence of executed non-disclosure agreements or other agreements specifically authorizing and addressing the exchange of confidential, proprietary, business sensitive, or other non-publicly available information among the relevant CAES Members, including such information that may be obtained from non-CAES Member entities, the CAES Members shall not exchange or provide such information without first properly putting into place a mutually acceptable agreement.

3.10.3 This Consortium Agreement as executed by the parties hereto is not deemed to contain, confidential, proprietary, business sensitive, or other non-publicly available information.

Article 4. General Terms.

4.1. Term. This Consortium Agreement shall be effective on the date that all CAES Members have fully executed the Agreement and shall continue indefinitely until terminated as prescribed below.

4.2. Termination and Withdrawal. Any CAES Member may terminate its participation under this Agreement and withdraw from the CAES Building with six (6) calendar months written notice to the other CAES Members. In the event of such termination and withdrawal, and provided that remaining CAES Members are continuing to occupy the CAES Building, the terminating CAES Member shall be obligated to quit the building, and to either relocate or complete any CAES related work by the effective date of termination, or to terminate such work as of the date of termination or prior to, and return unexpended funds to the applicable sponsor. Termination and withdrawal shall terminate that Member's obligations and rights, under this Agreement, subject to the terms and conditions of other written agreements and obligations set forth in this Agreement noted to survive the termination of this Agreement.

4.3. Approval and Amendments. This Agreement and any modifications thereto shall be subject to the written approval of the duly authorized representatives of all of the CAES Members and shall not be effective unless so approved.

4.4. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

4.5. Non-use of CAES Member's Names and Trademarks. The CAES Members shall not, without express written consent in each case, use any name, trade name, trademark, or other designation of any other Member in advertising, publicity, promotional, or any other activities.

4.6. Appropriations clause. CAES Member obligations and liabilities, to the extent they are subject to appropriated state or federal funds, shall be subject to the availability of such appropriated funds for the given and respective fiscal year of each CAES Member.

4.7. Assignment. No assignment of this Agreement or of any right accruing under this Agreement shall be made, in part or in whole, by any CAES Member, without the written approval of all parties to this Agreement with the exception that BEA may assign its rights and obligations under this Agreement to a successor management and operating contractor, DOE, or DOE's designee.

4.8. Third Party Rights. Except as otherwise stated, this Agreement shall inure to the benefit of and be binding only upon the Parties hereto and their respective successors and assigns. No third party beneficiary rights or benefits of any kind are awarded or implied unless

provided herein. This Agreement is not intended and does not create a joint venture or any other type of legal entity.

4.9. Dispute Resolution. Any dispute concerning performance or otherwise arising under this Agreement that cannot be resolved at the operating level, shall be stated in writing by the complaining CAES Members and presented to the other CAES Members for consideration by the CEB. If CEB does not reach resolution within one (1) calendar month, the parties shall forward the written presentation of the dispute to the Steering Committee. Any dispute not resolved by the Steering Committee within one (1) calendar month shall be forwarded to the Presidents of the CAES Member universities and the Laboratory Director of INL. Failing resolution by the Presidents and Laboratory Director within one (1) calendar month, the dispute shall be submitted in writing by the CAES Members to either non-binding or binding arbitration as follows in 4.10.

4.10. Arbitration. Upon separate mutual written agreement by the complaining CAES Members having a claim or dispute arising from or as a result of this Agreement may be submitted for either non-binding or binding resolution to the American Arbitration Association and shall be resolved by the American Arbitration Association in accordance with its rules of procedure except as such rules may be otherwise modified by separate mutual written agreement by the complaining CAES Members.

4.11. Venue and Governing Law. Any legal, including arbitration, proceeding instituted between the parties shall be in the state of Idaho. This Agreement and claims or disputes arising from or as a result of this Agreement shall be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho and by applicable federal laws.

4.12. Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the Parties at the following addresses or at such other addresses as the Parties may from time to time direct in writing.

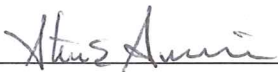
4.13 Contacts. The following respective contact information for each of the CAES Members regarding formal correspondence under or related to this Consortium Agreement is set forth in Appendix B, which will be updated as necessary.

4.14 Surviving Terms and Conditions. At a minimum, the following Articles will survive the termination or expiration of this Agreement: 3.4 – Intellectual Property; 3.6 – Use of CAES name, logo, and marks; 3.7 – Hold Harmless; 3.9 – Export Compliance; 4.5 – Non-use of CAES Member's Names and Trademarks; 4.9 – Dispute Resolution; 4.10 – Arbitration; 4.11 and Venue and Governing Law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

BATTELLE ENERGY ALLIANCE, LLC

IDAHO STATE UNIVERSITY

By: 

By: 

Name: S.E. Anmeter

Name: HOWARD GRIMES

Title: Assoc. Lab Director

Title: VICE PRESIDENT FOR RESEARCH? ECONOMIC DEVELOPMENT

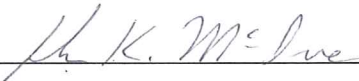
Date: 5-24-13

Date: 24 MAY 2013

BOISE STATE UNIVERSITY

UNIVERSITY OF IDAHO

By: 

By: 

Name: Mark Rudin

Name: John K. McIVER

Title: Vice President Reserch Econ Dev.

Title: V. Pres. Res & Econ Dev

Date: 5/24/13

Date: 24 May 2013