

HyTN IP PLAN

U.S. Department of Energy (DOE) Hydropower & Hydrokinetic Office (H2O) Hydropower Testing Network (HyTN) Program: ENERGYWERX PIA Voucher Opportunity (VO) 6

IP PLAN SUMMARY

The purpose of the “Hydropower Testing Network (HyTN) Program” is to provide hydropower technology developers and researchers (referred to in this HyTN IP Plan as Voucher Recipients or simply Recipients) with access to a United States based member network of pre-certified testing facilities (referred to as the “HyTN Network Facility Members” or voucher providers). While the testing undertaken in the HyTN Program is unlikely to produce significant new intellectual property and know-how, it will result in raw data and results from the testing of these hydropower technology devices.

The HyTN Program, administered by H2O, is operated in part through a Partnership Intermediary Agreement (PIA) with ENERGYWERX who is responsible for contracting with HyTN Facility Members who are not a federally owned laboratory or are part of the national laboratory (federally funded research and development centers – FFRDCs) system (collectively called “Non-Lab Member”). The HyTN Program requirements and provisions regarding intellectual property are dictated and governed by the Research and Development Agreements established between ENERGYWERX and the Non-Lab Member. The HyTN Program requirements and provisions regarding intellectual property for HyTN Network Members that are members of the national laboratory system (National Labs) or are federally owned (Federal Labs), collected called Lab Members, will be contained in the provisions of the HyTN Program direct awards by DOE to these Lab Members and the CRADAs (and other documentation) entered into between those Lab Members and the Voucher Recipients. Those requirements and provisions are generally set forth in this IP Plan, on the HyTN website (<https://openei.org/wiki/HyTN>), and more specifically set forth in the Project Documents, which consist of the following, all of which are incorporated herein by this reference (collectively the “Project Documents”):

- (a) The Hydropower Testing Network Voucher Opportunity Program Rules Document;
- (b) The Master Agreement, which pertains to the following documents based on the type of voucher provider.
 - For Non-Lab Members, the Research and Development Agreement (RDA) between ENERGYWERX and the Non-Lab Member;
 - For Federal Labs, the Interagency Agreement (IAA) between DOE and the Federal Lab.
 - For National Labs, the Annual Operating Plan (AOP) between DOE and the National Lab.
- (c) All attachments, exhibits, schedules, and other documents (if any) itemized on the List of Attachments, Exhibits, and Schedules to the Master Agreement;
- (d) Any and all amendments to or modifications of the Master Agreement entered into by the parties after the Effective Date of the Master Agreement;
- (e) Each agreement entered into (pursuant to the Master Agreement) by the Non-Lab Member and a Recipient with respect to the implementation of a project applied for by the Recipient and approved by ENERGYWERX and the Non-Lab Member; and
- (f) All task orders as signed by ENERGYWERX from time to time pertaining to Recipient Projects implemented under the terms of the Master Agreement (collectively “**Task Orders**”):

As between a Non-Lab Member and a Recipient, the rights and obligations regarding intellectual property and intellectual property issues will be set forth in each agreement that is entered into

by the Non-Lab Member and a Recipient with respect to the implementation of a project applied for by the Recipient and approved by ENERGYWERX, which such terms and conditions will not be inconsistent with the intellectual property requirements and provisions of (a) the HyTN Voucher Opportunity Program Rules Document, and (b) any ENERGYWERX issued Task Orders (collectively the “HyTN Program IP Provisions”). The Non-Lab Member shall assure that the Project Documents are in a form reasonably satisfactory to ENERGYWERX evidencing the agreement of each of the Non-Lab Member and the Recipient to comply with the HyTN Program IP Plan. The Non-Lab Members and the Recipient shall enter into a Joint Work Agreement describing the testing and research activities to be undertaken by Recipient at the Facility.

IP PLAN OUTLINE

1. Treatment of Confidential Information Shared Between Facilities and Recipients.

Where desirable, in the commercially reasonable judgment of the Non-Lab Member and the Recipient, those parties may enter into non-disclosure agreements, provided that the provisions of any such agreements shall not be inconsistent with the terms of this Agreement and the HyTN Program IP Provisions. The non-disclosure agreement to be used by Non-Lab Member and a Recipient, if any, shall be included in the Project Documents.

2. Facility Background Intellectual Property.

The Non-Lab Member may include any pre-existing Non-Lab Member-specific intellectual property rights and obligations supplementing and not inconsistent with the HyTN Program IP Provisions in each set of Project Documents.

3. Recipient Background Intellectual Property.

Recipients may include any pre-existing Recipient-specific intellectual property rights and obligations supplementing and not inconsistent with the HyTN Program IP Provisions in the Project Documents.

4. License Agreements.

To the extent any background intellectual property of the Non-Lab Member or a Recipient will be implicated in connection with the Project Documents, the Non-Lab Member and the Recipient may enter into commercially reasonable licensing agreements detailing the arrangements between those parties relating to the shared use of that background intellectual property so as to facilitate implementation of the Project Documents. A copy of the license agreement to be used by a Non-Lab Member and a Recipient, if any, shall be included in the Project Documents.

5. Treatment of Inventions Made Under the Award.

Invention disclosure obligations and disposition will be set forth in the Project Documents and will be consistent with the following:

- (a) The Non-Lab Member will disclose (and will cause Recipient to disclose) to ENERGYWERX any inventions which arise from the implementation of the Project Documents that may be patentable or otherwise protectable under the Patent Act.
- (b) ENERGYWERX will disclose any and all such inventions to the DOE within two (2) months after the inventor first discloses the invention to ENERGYWERX.
- (c) Non-Lab Member and Recipient will respectively own title to any invention made solely by its employees or agents. Title to jointly made inventions will be jointly owned. If either Non-Lab Member or Recipient elects not to retain its interest in a jointly made invention, the other party shall have the first option to acquire by assignment the exclusive title to such invention. The DOE (or its designee) may obtain title to any invention that is not retained by Non-Lab Member and Recipient .
- (d) Non-Lab Member (and as applicable the Recipient) will respectively be responsible for the payment of all costs relating to U.S. and foreign patent application filings and prosecutions and all costs relating to maintenance fees for U.S. and foreign patents, which are filed or registered solely by that party.
- (e) Non-Lab Member acknowledges (and will cause the Recipient to acknowledge) that the DOE may obtain title to each invention reported (that arises from the implementation of the Project Documents) for which a patent application or applications are not filed and for which any issued patents are not maintained by the Non-Lab Member or the Recipient.
- (f) Non-Lab Member acknowledges (and will cause the Recipient to acknowledge) that with respect to any and all invention(s) (the title to which is held by Non-Lab Member or by Recipient in connection with the implementation of the Project Documents) the DOE (or its designee) retains a non-exclusive, non-transferable, irrevocable, paid-up license to practice (or to have practiced for or on behalf of the United States) each and every such invention.

6. Treatment of Data Produced Under the Award.

Non-Lab Member will make available and submit (and will cause Recipient to make available and submit), to or at the direction of ENERGYWERX, all relevant data (both meta and raw) to support charts and figures presented in Recipient's Project Summary Report in connection with the implementation of the Project Documents (collectively "**Project Data**"). All such Project Data will be made available and submitted jointly by the parties (or submitted by either of them in the case of an individual submission) in a form capable of being uploaded to the HyTN Website. Compliance by Non-Lab Member and Recipient with the provisions of this section (the "**Public Disclosure Requirement**") is a condition precedent to any payment or reimbursement by

ENERGYWERX to Non-Lab Member in connection with or relating to the Project Documents and this Agreement.

(a) *At a minimum*, Non-Lab Member will cause the Recipient to upload to the HyTN Website the quantitative data underlying “figures” (including, but not limited to, all charts, graphs, and tables) contained in the Recipient’s final report. This data must be formatted in a way that makes it clear how to reproduce each figure from the published data and, in the case of relatively complicated figures, the submission should include any required scripts or narrative to achieve that objective.

(b) All final Recipient reports will be reviewed and approved by Non-Lab Member and DOE prior to acceptance. Artificially limiting the number of figures in the final report to avoid providing underlying data will be considered non-compliance with final reporting requirements.

7. Handling of IP Disputes Between Partners

In the event any disputes arise between Non-Lab Member and Recipient regarding IP that is developed in connection with the implementation of the Project Documents, Non-Lab Member will provide (and will cause Recipient to provide) prompt notice to ENERGYWERX of the existence of that dispute. Any such notice will include a thorough description of the nature of the dispute and the relevant facts pertaining to the dispute. Non-Lab Member will include a provision in the Project Documents that Non-Lab Member and Recipient will in good faith seek to resolve any such dispute amicably among themselves for a period of at least thirty (30) days before proceeding with any attempt to formally resolve the dispute by arbitration, litigation, or other third-party dispute resolution mechanism. ENERGYWERX will have no responsibility to mediate or determine the resolution of any such dispute, but to the extent requested by Non-Lab Member and Recipient, ENERGYWERX may assist in Non-Lab Member’s and Recipient’s good faith attempts to resolve the dispute amicably.