

**ASSOCIATED UNIVERSITIES, INC.**  
**National Radio Astronomy Observatory / Green Bank Observatory**  
**Draft Cooperative Research And Development Agreement (CRADA) TERM SHEET**  
**Confidential & Privileged**

*General Terms of a Proposed CRADA between Associated Universities, Inc. (AUI), which operates the National Radio Astronomy Observatory (NRAO), the Green Bank Observatory (GBO), and the Long Baseline Observatory (LBO), which are FFRDCs, on behalf of the National Science Foundation (NSF) (collectively called the “Lab”), and \_\_\_\_\_ (called the “Participant”) for research and development topics listed in Exhibit A.*

**Exhibit A: Research and Development Topics**

<b>Reference Number</b>	<b>Title</b>	<b>IP Status</b>

Terms with a ✓ are negotiable.  
Terms with an ≈ generally don’t change, unless needed for clarification.  
Terms with an \* are government requirements.

<p><u>Definitions</u> ≈</p>	<p>Congress has provided that the director of any FFRDC performing research under contract administered by the National Science Foundation may enter into CRADAs with any person or entity under the authority of 15 USC 3710a.</p> <p>The Lab performs substantial research and development using certain advanced scientific skills, facilities, personnel, special equipment, information, computer software and know-how pertaining with respect to Technology and the same is available for transfer to the public, and the Lab wishes to encourage and facilitate the transitioning of federally funded technology developments into the private sector for public commercial use.</p> <p>A CRADA is “...any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources, with or without reimbursement (but not funds to the non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research and development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31...” See 15 USC 3710a(d)(1)</p> <p>A CRADA is not a grant, purchase or license and the work associated with a CRADA must be consistent with the Lab mission.</p>
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<p><u>Effective Date</u> ✓</p>	<p>Effective Date of the agreement shall be designated in the agreement or, if no date is set, then the date of the signature of the last party to sign the agreement.</p>
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<p><u>Period of Agreement</u> ✓</p>	<p>This agreement shall commence on the effective date and end on the termination date, but can be extended by mutual agreement in writing.</p>
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<p><u>Scope</u> ✓</p>	<p>The Scope plan for each party can be attached as Schedules for the Lab (Schedule A) and Participant (Schedule B). A Scope plan must contain any necessary Timelines, Milestones, Deliverables, Go/No Go Decision Points, Payment schedules and Reimbursements schedules.</p>
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<p><u>SoW &amp; Tangible Contributions</u> ✓</p>	<p>A Statement of Work (Schedule C) for both parties should specify tangible contributions including personnel, resources, skills, know-how, software, funding amounts (no federal funds from the Lab), materials, equipment and facilities that will be used for carrying out the work.</p>
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<p><u>Review of Publications</u> ✓</p>	<p>Both parties agree to confer and consult in advanced review prior to publication or public disclosure of subject results made under this agreement. Either party may require the other to remove Trade Secrets but not require removal of non-confidential info, and must do so within 90 days unless otherwise mutually agreed. This term is subject to the provisions of the Prior Trade Secrets and Jointly Developed Trade Secrets.</p>
<p><u>Reporting Requirements</u> ✓</p>	<p>Progress reports are to be filed per mutually agreed upon terms of both parties (e.g. monthly, quarterly, semi-annually, etc.). A final report is to be completed sixty (60) days after project completion.</p>
<p><u>Confidentiality</u> ✓</p>	<p>Any active NDA previously agreed between parties is incorporated by reference to be contemporaneous with the Term of Agreement.</p>
<p><u>Cooperation</u> ✓</p>	<p>Lab and Participant shall at all times cooperate in good faith including promptly executing any and all documents deemed necessary or desired by the other in the preparation and prosecution of applications, in establishing ownership and in the enforcement of any IP rights.</p>
<p><u>Publicity Use of Lab Names</u> ≈</p>	<p>Participant shall not use the name of NRAO, GBO, LBO, AUI or NSF on any product or service which is directly or indirectly related to this agreement or patent license or assignment agreement without prior written approval of the Lab.</p>
<p><u>Government Use License</u> *</p>	<p>The Federal Government shall retain government-use license rights pursuant to 35 USC 203, including a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. government any subject invention made during and subject to the agreement, throughout the world.</p>
<p><u>Government March-In Rights</u> *</p>	<p>The Federal Government shall retain march-in rights pursuant to 35 USC 203, including exceptional circumstances around public health, public safety, emergencies, public use requirements, Participant not substantially manufacturing in the USA, Participant is controlled by rogue country, requiring Participant to license to someone else, or grant a license to a non-Participant party.</p>
<p><u>Audit Rights</u> *</p>	<p>This agreement shall be subject to National Science Foundation review rights.</p>

<p><u>Indemnification</u> *</p>	<p>Participant shall indemnify, defend and hold harmless Lab, NRAO, GBO, LBO, AUI, NSF, their respective members, officers, directors, agents, employees, and persons acting on their behalf, (“Indemnities”) from liability involving the use of the patented inventions, either directly or indirectly, by Participant. The Lab cannot indemnify the Participant nor provide a freedom-to-practice warranty.</p>
<p><u>Warranties</u> *</p>	<p>Lab does not provide warranties, but will with reference to the fact that the Lab owns 100% title to any intellectual property that</p> <ol style="list-style-type: none"> <li>1. may be contributed by the Lab to this CRADA development effort, and/or,</li> <li>2. may become licensed to the Participant through an option that is subject to this agreement.</li> </ol>
<p><u>Prior Trade Secrets</u> ≈</p>	<p>Trade Secrets and proprietary information made by either party before entering into this agreement:</p> <ol style="list-style-type: none"> <li>1. that are not generally known, nor already available to the public, nor available from other sources, nor made available by the owners to others without obligation concerning its confidentiality,</li> <li>2. that confers an economic advantage over competitors,</li> <li>3. where reasonable efforts are made to keep it secret,</li> <li>4. that are not independently created by the receiving party as shown by its written records,</li> </ol> <p>can be lawfully withheld from disclosure indefinitely and from the Freedom of Information Act [5 USC (b)(4)] as provided in 15 USC 3710a(c)(7)(A).</p> <p>Royalty rates and revenues can be included under Prior Trade Secrets.</p>
<p><u>Jointly Developed Trade Secrets</u> ≈</p>	<p>Trade Secrets and proprietary information made by either party during and subject to this agreement:</p> <ol style="list-style-type: none"> <li>1. that are not generally known, nor already available to the public, nor available from other sources, nor made available by the owners to others without obligation concerning its confidentiality,</li> <li>2. that confers an economic advantage over competitors,</li> <li>3. where reasonable efforts are made to keep it secret,</li> <li>4. that are not independently created by the receiving party as shown by its written records,</li> </ol> <p>can be lawfully withheld from disclosure for up to five (5) years and from the Freedom of Information Act (5 USC 552 et seq.) for up to five (5) years as provided in 15 USC 3710a(c)(7)(B).</p>
<p><u>Ownership of new subject IP</u> ≈</p>	<p>For all intellectual property (including but not limited to copyrights, inventions, know-how, mask works, trademarks, trade-secrets, etc.), the right to ownership shall remain with the creator(s) or inventor(s) of such works, whether made or conceived individually or jointly by contributors to this CRADA from the Lab or Participant.</p>

<p><u>Use License of new subject IP</u> ✓</p>	<p>The Lab and Participant shall grant each other a non-exclusive, paid-up, royalty-free license for internal use of any new copyrights, inventions, know-how, mask works, trademarks, trade-secrets or other intellectual property made during the subject engagement of the agreement.</p>
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<p><u>Sole Inventions</u> ≈</p>	<p>Each party shall retain title to any invention made pursuant to this agreement made solely by its own personnel. With respect to any such invention, both parties agree the other party shall have a right to use such invention for research and purposes related to its performance under this agreement, and, further, if such invention is made solely by either party alone but uses more than de minimis use of the Lab facilities, then the Government Use License and Government March-in Rights shall apply.</p> <p>Each Party shall notify the other Party Lab of its intent to file patent applications on inventions, before filing such applications, which are the subject of this paragraph.</p>
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<p><u>Joint Inventions</u> ≈</p>	<p>Both parties shall co-own any inventions under this agreement made jointly by personnel from both parties.</p> <p>With respect to any such joint inventions, the Parties agree that neither Party shall have the right to practice joint inventions commercially without receiving written permission from the other Party. Participant shall have the option to obtain from the Lab, a commercial exclusive or non-exclusive license in the joint invention at a reasonable royalty rate and with other considerations and conditions to be negotiated in good faith between the Parties. Each Party shall have the right to practice the entirety of any joint invention non-commercially without obligation to the other Party.</p>
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<p><u>Participant Licensing of New Subject IP</u> ≈</p>	<p>Participant shall have option to negotiate a license in a field of use that is:</p> <ol style="list-style-type: none"> <li>1. Counter to the nature of scientific endeavor of the Lab;</li> <li>2. Not opposed by many potential collaborators;</li> <li>3. Where the field of use can be determined during the licensing process after the intellectual property is made;</li> <li>4. Determined not to be against standard operating procedure of the Lab to avoid a pre-negotiated field of use option for an exclusive license.</li> </ol>
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<p><u>Copyrights &amp; Mask Works</u> ≈</p>	<p>Prior data/authoring belongs to owning party, jointly made data/co-authored belongs jointly, solely made data/authoring belongs to sole creator. Parties must mark works with appropriate copyright notice prescribed under USC Title 17.</p> <p>Copyrighted works solely owned by Lab may be used and distributed by Participant subject to the provisions of Copyright Royalties.</p> <p>Copyrighted works owned solely by Participant may be used internally by Lab for purposes of performance under this agreement and for purposes consistent to</p>
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	<p>the mission (scientific endeavor) of the Lab.</p> <p>Copyrighted works developed using the facilities of the Lab shall be subject to the Government Use License and the Government March-in Rights.</p> <p>Government purposes include competitive re-procurement, but do not include the right to have or permit others to use the copyrighted works for commercial purposes.</p> <p>Participant will clearly mark all copyrighted works subject to a Government purpose license with the words “Government Purpose License.”</p>
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<p><u>Copyright &amp; Mask Work Royalties</u> ✓</p>	<p>Participant shall pay 10% royalties from gross income received from any disposition of copyrighted work created and subject under this agreement.</p>
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<p><u>Breach and Termination</u> ✓</p>	<p>This Agreement may be terminated by either party for any material breach of the Agreement by the other party. Such termination shall be effective sixty (60) days after written notice specifying the breach to the other party. If the specified breach is cured before the effective date of termination, the Agreement will not be terminated.</p> <p>Participant is still required to pay all owed funds at the time of termination, if applicable.</p>
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<p><u>Disputes</u> ≈</p>	<p>Disputes between Lab and Participant shall be adjudicated according to the laws of the Commonwealth of Virginia, and shall be done through Binding Arbitration per the following considerations. Both the Lab and Participant shall follow the rules of JAMS. (<a href="http://www.jamsadr.com">www.jamsadr.com</a>)</p>
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<p><u>Conflict of Interest Mitigation</u> ✓</p>	<p>The Parties shall define how a conflict of interest shall be managed when the Lab inventor/creator is or becomes a licensee of intellectual property subject to this agreement.</p> <p>The Parties shall define how a conflict of interest shall be managed when the Lab inventor/creator is or becomes a ‘champion’ of intellectual property subject to this agreement.</p> <p>The Parties shall define how a conflict of interest shall be managed when the Lab inventor/creator is or becomes a stockholder, moonlighter, or commercializer of intellectual property subject to this agreement.</p>
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<p><u>Commencement Fee</u> ✓</p>	<p>Participant shall pay to Lab a fixed fee in the amount specified below as a Commencement Fee to begin operations, which will be nonrefundable and not creditable.</p>
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	<p>Amount: \$10,000 U.S. Dollars</p> <p>This fee is due within 10 business days of the Effective Date of this Agreement. This Agreement automatically terminates if Commencement Fee is not received by Lab on or before 10 business days after the Effective Date of this Agreement.</p>
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End of document

SCHEDULE A & B  
**Scope Plan Template with Required Components**

**1. Scope Statement**

Describe the scope of work in terms of the intended result (product, service or other).

**2. Acceptance Criteria**

Define the intended performance criteria, quality standards or technical specifications that the intended result should meet.

**3. Monetary Schedules**

*3.1 Payments for Work to be Performed*

*3.2 Reimbursements for Expenses*

**4. Exclusions**

Items or parameters not considered to be part of this Agreement.

**5. Constraints**

Briefly describe any constraints such as manufacturability, manufacturing cost goal, interface connections with some other device or service, etc.

**6. Assumptions**

Briefly describe assumptions with regards to availability of materials, personnel, equipment and other factors within the Lab.

SCHEDULE C  
**Statement of Work (SoW) Template with Required Components**

**1. Project Description**

Provide a summary statement defining the boundaries of the project in terms of tasks, deliverables, costs and deadlines.

**2. Deliverables**

Statement of the known deliverables required from this SOW.

*2.1 Hardware*

Description of the hardware.

*2.2 Software*

Include information on software and firmware requirements.

*2.3 Documentation*

Include all drawings, preventive and corrective maintenance documents required.

*2.4 Services*

Include consulting services required.

*2.5 Warranty/Support*

Describe any warranty or support requirements here.

*2.6 Deliverable Schedule*

Describe the delivery schedule, summary milestones, and due dates as best known.

*2.7 Shipping*

Provide the Shipping information here with any special considerations or information (ITAR, EAR, other other) as appropriate. Estimate the shipping costs.

**3. Project Contacts**

Provide the contact information here to include NRAO, GBO, LBO, collaborators, and customer.

**4. Terms and Conditions**

The *estimated cost* of the proposal is \$xxx. This estimated cost includes all deliverables as defined in section 2. The actual cost may vary. Terms of export compliance may be applicable.

*4.1 Expected Period of Performance*

Identify the timeframe that the project is expected to be performed within.

*4.2 Summary Budget Table*

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5
Labor					
ME&S					
Travel					
Indirect Costs					
<b>Total</b>					