

**EXHIBIT 1 – NAWI ADDITIONAL PARTY
NON-DISCLOSURE AGREEMENT**

THIS NON-DISCLOSURE AGREEMENT (the “NDA”) effective as of last date of signature below by and between The Regents of the University of California, through the Ernest Orlando Lawrence Berkeley National Laboratory, One Cyclotron Road, Berkeley, California 94720 (“Berkeley Lab”) and the entity listed below (“Additional Party”). The Additional Party hereby agrees to be bound by the terms and conditions of this Non-Disclosure Agreement, including any modifications to the NDA to which this Exhibit 1 is attached:

Company/University/Institution: _____
Name of Technical Representative: _____
Title or position: _____
Address: _____
Tel: _____ E-mail: _____

Agreed and Accepted for Additional Party:

[NAME OF ADDITIONAL PARTY]

By: _____
Name: _____
Title: _____
Date: _____

Read and Acknowledged by
Additional Party Technical Representative:

By: _____
Name: _____
Title: _____
Date: _____

The National Alliance for Water Innovation (“NAWI”) is a U.S. DOE Energy Innovation Hub, established to address water security issues in the U.S. through multidisciplinary early stage research and development for energy-efficient and low-cost desalination technologies that will enhance the economic, environmental, and energy security of the nation. Funding for NAWI is provided through the Funding Opportunity Announcement (FOA) Number DE-FOA-0001905 for the NAWI Energy-Water Desalination Hub with cost share provided through public and private funds.

A NAWI Consortium was created and consists of research and industry Consortium Members with experience performing peer-reviewed research in desalination or related water treatment processes who: (a) were selected to conduct a research project; and (b) have signed the Consortium Agreement. The NAWI Consortium Agreement is found at this link: https://drive.google.com/file/d/1o30cDvc99RtsG_wPUBnv_B7zBA8Osy75/view?usp=sharing. This multi-party Non-Disclosure Agreement (“NDA”) is for sharing confidential information within the NAWI Consortium.

All Consortium Members are parties to this NDA (individually “Party” or collectively “Parties”) as of the Effective Date of the Consortium Agreement to which this NDA is an appendix. An “Additional Party” is defined as a party who is not listed in Section 2 of the Consortium Agreement and has executed an Additional Party NDA, template attached as Exhibit 1 of the NDA. Subject to approval under the process set forth in Paragraph 1 below, any other person or entity that executes an Additional Party NDA (Exhibit 1 of this NDA), which is accepted by NAWI’s Operations Director at NAWI@lbl.gov, will become a Party to this NDA effective as of the date of such approval.

In order to protect certain Information (defined herein below) exchanged by and among the Parties for the purpose of facilitating research and development collaborations under NAWI program activities (the “Purpose”), the Parties hereby agree:

1. DISCLOSING/RECEIVING PARTIES

- 1.1. A Recipient shall not use or disclose Information other than in accordance with the terms and conditions of this NDA. It is agreed that Information disclosed and received under this NDA may be mutually shared by the Parties unless further restricted (e.g., by the disclosing Party). Parties may restrict access from other Parties by the terms of the Project agreement for a particular Project.
- 1.2. Administrative and Technical Contacts: Each Party’s representative for coordinating disclosure or receipt of Information is identified in Appendix J of the NAWI Consortium Agreement as “Technical Contact” and each Party’s representative for receiving notices is identified in that Appendix J as “Administrative Contact.” Appendix J can be viewed at this link: <https://www.nawihub.org/consortium>. These contacts may be amended by written notice of a change to NAWI’s Operations Director at NAWI@lbl.gov. NAWI’s Operations Director will distribute the updated Appendix J upon receiving such notice.
- 1.3. The Parties agree to the following process to add Additional Parties to this NDA:
 - 1.3.1. The additional party executing a copy of Additional Party NDA; and
 - 1.3.2. NAWI’s Operations Director accepting and executing such Additional Party NDA, and providing via e-mail to all the Parties’ Technical Contacts identified in Appendix

J and Administrative Contacts for notices identified in Paragraph 16, with the copy of such fully executed Additional Party NDA (Exhibit 1).

2. DESCRIPTION OF INFORMATION

- 2.1. The Information disclosed under this NDA is: information of each of the Parties related to the NAWI program activities that a Party considers to be proprietary information or business sensitive, privileged, commercial and/or financial information, including, research and development objectives, plans, and management plans, and may also include specific background information, when such Information is clearly identified and marked as “Confidential” in accordance with Paragraph 8 by the Party owning or having the right to disclose the Information. If such Information is not confirmed and documented in this express manner, no Party to this NDA shall have an obligation of confidentiality with respect to such Information.

3. RESTRICTIONS

- 3.1. Any Party receiving Information (“Recipient”) from a Party disclosing such Information under this NDA (“Discloser”) shall maintain the Information in confidence and may disclose the Information only to its employees, students, contractors, subcontractors, or agents a) having a need to know such Information to fulfill the Purpose and (b) who are legally bound by law, policy or written agreement or obligation to safeguard Information to substantially the same extent as the Recipient is bound to do so under this NDA. The Discloser of Information shall remain the Party that first discloses such Information, even if a Party subsequently discloses such Information in furtherance of the Purpose. Prior to being granted access to Information, employees, students, contractors, subcontractors, or agents of a Recipient shall be advised concerning the requirements and restrictions of this NDA, directed to use and safeguard the Information properly and not to disclose such Information without proper authorization. Except as otherwise required herein, if disclosure of Information to a third party becomes necessary, the third Party may be added as an Additional Party to this Agreement and NDA prior to the disclosure and in accordance with the procedures to add Additional Parties. All parties, whether Parties to this NDA or included as Additional Party, may share Information with each other.
- 3.2. Notwithstanding the foregoing, because the United States (“U.S.”) Government has ownership, authority, control, audit, and inspection rights over all activities conducted at each of the National Laboratories’ facilities, Information may be disclosed to employees of the U.S. Government who are subject to the U.S. Trade Secrets Act (18 U.S.C. 1905) regarding further disclosure, a designee of the U.S. Government, or employees of NETL site support contractors and persons working at NETL for educational purposes who have agreed to keep the Information confidential.

4. CONFIDENTIALITY PERIOD

- 4.1. This NDA and each Recipient’s duty to protect Information expires (7) seven years from the Effective Date of this NDA.

5. DISCLOSURE PERIOD

- 5.1. This NDA applies to Information described in Paragraph 2 that is actually disclosed to a Recipient under this Agreement, within six (6) years after the Effective Date of the Agreement and marked in accordance with Paragraph 8 below.

6. STANDARD OF CARE

6.1. Each Recipient shall protect the Information received hereunder by using the same degree of care that Recipient uses to protect its own information of a like nature but no less than reasonable care. Upon discovery of any misuse, theft, loss, destruction, or unauthorized disclosure of protected Information, the Recipient shall promptly notify the Discloser in writing (e-mail shall suffice) and take action to prevent further disclosure and to recover any protected Information already disclosed.

7. THIRD PARTY INFORMATION

7.1. A Discloser may only disclose a non-Party's proprietary information when authorized to disclose such proprietary information to the Recipient. In the event a Discloser discloses a non-Party's proprietary information, the Discloser represents that it is authorized to disclose such proprietary information to the Recipient, and the Recipient agrees to treat such proprietary information as the Discloser's protected information.

8. MARKING

8.1. A Recipient's obligations shall only extend to Information that is described in Paragraph 2, and that: is (a) marked as "confidential," "business sensitive," "protected information" or "proprietary"; or (b) is expressly identified as confidential, business sensitive or proprietary in an oral or visual disclosure and is appropriately documented and summarized in writing by the Discloser consistent with Paragraph 2, within thirty (30) days of disclosure.

9. EXCLUSIONS

9.1. This NDA imposes no obligation upon any Recipient with respect to Information that:

- 9.1.1. Was rightfully in Recipient's possession (without obligations of confidentiality) before receipt from Discloser;
- 9.1.2. Is or becomes a matter of public knowledge through no fault of Recipient
- 9.1.3. Is rightfully received by Recipient to the best of Recipient's knowledge from a third party without a duty of confidentiality
- 9.1.4. Is disclosed by the owner of the Information to a third party without imposing a duty of confidentiality on the third party;
- 9.1.5. Recipient can demonstrate is independently developed by employees of Recipient who did not have access to such Information;
- 9.1.6. Must be disclosed under operation of law or regulation; or
- 9.1.7. Is disclosed by Recipient with prior written approval of the owner of the Information.

9.2. In the event a Recipient is subjected to any legal process that seeks to require it to produce Information that is clearly marked as protected Information for inspection or review in a judicial or administrative proceeding, the Recipient shall promptly provide notice and a copy of the legal process to the Discloser in order that the Discloser may have an opportunity to challenge the legal process or seek a protective order. If, in the absence of a protective order, a Recipient is compelled to produce Information to a tribunal or be

found liable in contempt and subjected to a penalty, the Recipient may disclose such Information to the tribunal.

10. NO WARRANTY

- 10.1. Each Discloser represents that it has the right to make the disclosures under this NDA. No warranties, including warranties against infringement, are made by any Party under this NDA. Any Information exchanged under this NDA is provided “as is,” without any warranty or representation whatsoever, express or implied. The Parties make no warranty or representation whatsoever as to the sufficiency or accuracy of the Information provided hereunder or as to any results obtained therefrom.

11. RIGHTS

- 11.1. All Information shall remain the property of the Discloser. No license to a Party, under any patent, trademark, copyright, or any other intellectual property right of any Party, is either granted or implied by the conveying of Information to such Party. This NDA shall not restrict Recipient from reassigning any of its employees, students, contractors, subcontractors, or agents to perform similar or identical work for or with others, but such employees, students, and other individuals shall not use any other Party’s Information that is subject to this NDA.

12. EXPORT LAWS AND REGULATIONS

- 12.1. The Parties acknowledge that the export of goods and/or technical data from the United States may require some form of export control license from the United States (U.S.) Government and that failure to obtain such export control license may result in criminal liability under the laws of the U.S. Each Party agrees to comply with applicable government export and import laws and regulations.
- 12.2. The Parties acknowledge the need for prompt mutual notification should any Discloser or Recipient identify an export control restriction for any Information disclosed or received under this NDA. The Parties shall observe the process provided for in Section 4.2.1 in Appendix C - Export Control Plan.

13. EXPORT CONTROL

- 13.1 Some of the Parties 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, without receiving written permission from that Party’s export control officer or designated official, 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. The Parties agree to assist receiving Parties by providing all applicable Export Control Classification Numbers (ECCN) and/or the specific U.S. Munitions List (USML) Category information for such export controlled information.

14. SUPREMACY OF EXECUTIVE ORDER AND FEDERAL LAW

- 14.1. Notwithstanding the foregoing, the Parties agree that the provisions of this NDA shall be interpreted so that they are consistent with and do not supersede, conflict with, or otherwise alter a Party’s (or such Party’s employee’s) 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 NDA and are controlling.

15. MISCELLANEOUS:

- 15.1. This NDA imposes no obligation on any Party to disclose, purchase, transfer, or otherwise dispose of any Information, technology, services or products.
- 15.2. This NDA does not create any agency or partnership relationship. Each Party is responsible for its own expenses incurred as a result of any discussions between the Parties.
- 15.3. Any modifications to this NDA shall be made in writing and signed by all Parties to this NDA. Facsimile signatures and signatures provided on an electronic copy of a document (e.g., PDF format) are deemed equivalent to original signatures for purposes of this NDA. Notwithstanding the foregoing, a change to the representatives and contacts identified in Sections 2 or Appendix J of the Consortium Agreement, or do not require a signature of all the Parties but may be accepted by the NAWI Operations Director.
- 15.4. This NDA and all Information received hereunder by a National Laboratory may, as applicable, be transferred to DOE or its designee upon termination of that National Laboratory's Prime Contract with DOE, in accordance with specific rights established in that National Laboratory's Prime Contract.
- 15.5. This NDA may be signed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one and the same instrument.
- 15.6. Any Party may terminate participation in this NDA upon fifteen (15) calendar days prior written notice to the other Parties. Termination or expiration of this NDA for any reason shall not relieve any Party of any obligation in Paragraph 4 or Paragraph 5 herein.
- 15.7. Except as described in 14.4 herein, this Agreement may not be assigned without the prior express written authorization of the other Parties. All obligations incurred by a Recipient under this Agreement with respect to Information shall be binding on its authorized successors and assigns.

16. NOTICES

- 16.1. Any notices to be given under this NDA, other than those contemplated by Paragraph 1, shall be in writing and addressed to the Parties as shown in Appendix J, and shall be:
 - 16.1.1. Delivered by certified or registered first class mail;
 - 16.1.2. Sent by facsimile to the other Party(ies) at its facsimile number indicated above or to such other facsimile number as the Party(ies) will have previously furnished to the other Party(ies) by proper notice, with machine confirmation of transmission;
 - 16.1.3. Sent by electronic mail; or
 - 16.1.4. Sent by commercial courier service;

16.2. And shall be deemed to have been given or made as of the date received.

In Witness Whereof, the Parties hereto have duly executed this NDA that is effective as to each Consortium Member as of the Effective Date, and to each Additional Party the date the Additional Party's participation is accepted by NAWI's Operations Director at NAWI@lbl.gov.

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