

National Alliance for Water Innovation Alliance Membership Agreement

This agreement (“Agreement”) is entered into by and between The Regents of the University of California through the **Lawrence Berkeley National Laboratory (“LBNL”)**, having a place of business at 1 Cyclotron Road, Berkeley, CA 94720 and [_____] (hereinafter “**Alliance Member**”), having a place of business at [_____]. If Alliance Member is itself a consortium, user society, or otherwise has members or sponsors, the rights and privileges granted under this agreement extend only to the paid employees of the Alliance Member organization, not to its members or sponsors. This Agreement is effective as of the date of the last signature below.

BACKGROUND

WHEREAS, the National Alliance for Water Innovation (“NAWI”) is a U.S. Department of Energy (“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.

WHEREAS, NAWI is led and operated by Ernest Orlando Lawrence Berkeley National Laboratory (LBNL), which is managed and operated by The Regents of the University of California under the authority of its Prime Contract No. DE-AC02-05CH11231 with the U.S. DOE...

WHEREAS, The mission of the NAWI Energy-Water Desalination Hub is to engage in early-stage applied research to lower the cost and energy of desalination and associated water treatment by developing next-generation autonomous, precise, resilient, intensified, modular, and electrified water treatment technologies through a nationally-coordinated program of early-stage applied research. To advance the mission of NAWI, the NAWI Alliance membership organization (“Alliance”), and the NAWI Research Consortium (“Consortium”) were created.

WHEREAS, the NAWI Alliance is a group consisting of public and private entities, academia, research institutions, and individuals (collectively “Alliance Members”) that support and participate in activities and events of NAWI.

WHEREAS, the Alliance Member wishes to participate in the activities and events of the NAWI as a member of the NAWI Alliance.

WHEREAS, NAWI agrees to the Alliance Member’s participation in the activities and events of the NAWI Alliance, subject to the terms and conditions of this Agreement.

NOW THEREFORE, the Alliance Member and LBNL, on behalf of the Alliance Members, agree to abide by the terms of this Agreement.

1. DEFINITIONS

- 1.1 “Alliance Member” is defined as a for-profit company, a non-profit company, a university, a non-profit organization, a federal agency, a state agency, a DOE national laboratory, or other entity as approved by DOE and LBNL, that supports NAWI through membership and participation in the activities or events of NAWI.
- 1.2 “Associate Member” is defined as an employee of Alliance Member organization that has been specifically designated by Alliance Member Point of Contact as being interested in participating in NAWI Alliance. Associate Members shall be entitled to all member benefits and subject to all responsibilities as delineated in this Agreement.
- 1.3 “Effective Date” means the date of Alliance Member’s contract representative signature to this Alliance Agreement.

2. MEMBERSHIP

- 2.1 All Alliance Members must submit an application for approval for membership to NAWI. No membership fee is required.
- 2.2 Each Alliance Member, and their designated Associate Members, shall be entitled to the benefits in Exhibit A, and are subject to the Code of Conduct described in Exhibit B.

3. TERM AND TERMINATION

- 3.1 The initial term of this Agreement shall begin on the Effective Date and shall continue in force through sixty (60) calendar months immediately following the Effective Date, or the termination of the NAWI Work Authorization Statement (WAS) with DOE. Alliance Membership can be revoked if persistent deficiencies in compliance with the responsibilities and Code of Conduct described herein are not resolved after 30 days from the time written complaint is lodged by the NAWI Executive Team to the representative of the NAWI Alliance Member in question. In such instance, NAWI may terminate the Alliance Member’s participation in NAWI Alliance if NAWI determines, after direction from DOE AMO, that such termination is in the best interest of NAWI.
- 3.2 Alliance Member may resign at will from the NAWI Alliance upon written notice to LBNL on behalf of NAWI. Such resignation shall be effective 30 days after written notice is provided to LBNL on behalf of NAWI.
- 3.3 NAWI, through LBNL, may terminate Alliance Member’s membership at any time upon written notice to such Alliance Member. Such termination shall be effective 30 days after written notice of termination has been provided to such Alliance Member.

4. WARRANTIES

EACH ALLIANCE MEMBER DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY FOR MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, TO EACH OTHER, TO ANY AGENCY, AND TO THIRD PARTIES FOR ACTIONS, OMISSIONS, PRODUCTS, NON-CONFORMITIES, DEFECTS, LIABILITIES, OR INFRINGEMENTS ARISING OUT OF PARTICIPATION IN THE NAWI ALLIANCE. JOINT AND SEVERAL LIABILITY SHALL NOT ATTACH TO THE ALLIANCE MEMBERS SO THAT NO ALLIANCE MEMBER IS RESPONSIBLE FOR THE ACTIONS OF ANOTHER ALLIANCE MEMBER BUT IS RESPONSIBLE ONLY FOR THOSE TASKS SPECIFIED TO IT AND TO WHICH IT AGREES IN A SEPARATELY EXECUTED AGREEMENT. EACH ALLIANCE MEMBER DISCLAIMS ANY LIABILITY FOR CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES.

5. PROMOTION AND PUBLICITY

- 5.1 NAWI encourages Alliance Members to promote or publish their participation and membership status in the NAWI Alliance. NAWI, through LBNL, will provide standard language describing NAWI that is suitable for Alliance Members to use in publicity, press releases, and advertising. NAWI, through LBNL, also intends to provide standard presentation materials for use by Alliance Members.
- 5.2 Alliance Members may use content that has already received public release approval by NAWI and DOE and/or that is available publicly for repetition and further dissemination of general announcements by NAWI, such as an organization joining the NAWI Alliance or general event notification information; provided, however, that notification of significant press or public releases of publicly available information (for example, conference presentations) shall be submitted to [NAWI@lbl.gov] for situational awareness prior to the release.
- 5.3 Presentations, publications or other materials that include NAWI's name or logo may not use the NAWI and LBNL and associated names and logos in a manner that endorses a commercial entity, product or service. Publication, marketing or press materials by non-governmental for-profit Alliance Members should be submitted to [NAWI@lbl.gov] prior to the time of distribution or public release for review to ensure that no such endorsement of an entity or product is described in the materials. Alliance Members may not represent as their own product or service any product or service of the NAWI, the NAWI Alliance, LBNL, or another Alliance Member.
- 5.4 NAWI is eager to promote the participation of Alliance Members. To that end, Alliance Member provides its permission for NAWI to use, during the term of NAWI Alliance Membership, Alliance Member's name and logo for the limited purposes of indicating that Alliance Member has entered into this Agreement, and to identify Alliance Member as a member of the NAWI Alliance. Such use will be in accordance with any published or provided guidelines on the use of Alliance Member's name and logo.

6. MISCELLANEOUS

- 6.1 Alliance Member may waive any right, breach, or default which Alliance Member has the right to waive, provided that the waiver is not effective against the Alliance Member unless it is in writing, is signed by Alliance Member, and specifically refers to this Agreement. No waiver of any breach of any provision of this Agreement shall be deemed a waiver of any preceding or succeeding breach. All the terms, covenants and conditions of this Agreement are for the exclusive benefit of Alliance Member.
- 6.2 The NAWI Alliance includes, among its Alliance Members, parties who are business competitors. It is the policy of NAWI to comply with United States antitrust and competition laws that apply to each of its Alliance Members and to encourage its Alliance Members to do so, as well. Accordingly, in connection with any meeting or activity sponsored by NAWI or the NAWI Alliance, no Alliance Members shall reach any agreement or exchange any information concerning cost or pricing information, sales or marketing strategies, terms and conditions of purchase or sale, the allocation of customers, or territories. Alliance Members shall comply with the NAWI Antitrust Policy Statement, which is incorporated in its entirety and attached hereto as Exhibit C.
- 6.3 This Agreement is not a contract, or a grant as defined for purposes of federal procurement law and does not create a partnership, agency or joint venture among or between Alliance Members of the NAWI Alliance.
- 6.4 The obligations set forth in Sections 4 hereof shall survive termination of this Agreement.
- 6.5 Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by Alliance Member without the prior written consent of LBNL on behalf of NAWI. Notwithstanding, Alliance Members that are DOE National Laboratories may assign their rights and responsibilities under this Agreement to the Government or any successor-in-interest for management and operation of their National Lab.
- 6.6 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 6.7 Alliance Member and NAWI recognize that additional agreements, to be negotiated and entered into between themselves and/or with third parties, may be required as conditions of Alliance Member's participation in certain activities or events of the NAWI Alliance, or NAWI, or as program requirements for Alliance Member's access to certain information, including, without limitation, nondisclosure agreements, material transfer agreements, agreements on export control or information security, research agreements, agreements on matching contributions, and agreements to flow-down applicable terms and conditions associated with NAWI Funding.
- 6.8 Alliance Member agrees to comply with U.S. Export Control Laws and Regulations. Alliance Member agrees that the export of goods and/or technical data from the United States may require an export control license from the U.S. government and the failure to obtain such export control license may result in criminal liability under the laws of the United States. Alliance Member will not disclose information or any matter derived from information to any person (including its own employees), nor export any information from the United States, if such disclosure would violate the Arms Export Control Act,

the International Traffic in Arms Regulation, the Export Administration Act, the Department of Commerce Export Regulations, or any other applicable law or regulation of the United States. Alliance Member is solely responsible for its compliance with all U.S. Export Control laws and regulations.

- 6.9 All notices under this Agreement shall be in writing and shall be delivered personally or sent by U.S. mail or electronic communication. Notices to Alliance Member shall be delivered to Alliance Member through the following Point-of-Contact:

Alliance Member Organization: _____

Point-of-Contact: _____

Address: _____

Telephone: _____

Electronic Mail Address: _____

Alliance Member’s Point-of-Contact (as listed above) shall be the individual exclusively entitled to cast Alliance Member’s vote or grant Alliance Member’s consent on any item coming before the NAWI Alliance membership (or a subclass of membership to which Alliance Member belongs). Alliance Member may designate a new Point-of-Contact at any time in writing to LBNL on behalf of NAWI. Each Alliance Member may have Associate Members within the Alliance Member’s organization, and these Associate Members are subject to the same benefits. The Alliance Member may add more Associate Members upon notification to LBNL, on behalf of NAWI.

- 6.10 Alliance Members shall be solely responsible for travel, transportation and any related or incidental expenses of its and its representatives’ participation in the activities and events of the NAWI Alliance or NAWI including, without limitation, membership and Board meetings, councils, advisory boards and committees, site visits and the like. These costs, as allowable, shall be reported as cost share using a NAWI-designated form.

The Alliance Member and LBNL caused this Agreement to be executed by its duly authorized representatives.

[ALLIANCE MEMBER]

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA THROUGH LAWRENCE BERKELEY NATIONAL LABORATORY

Name _____

Name _____

Title _____

Title _____

Signature _____

Signature _____

Date _____

Date _____

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EXHIBIT A**ALLIANCE MEMBERSHIP BENEFITS**

- (a) Benefits of Membership. Each Alliance Member shall be entitled to the following benefits:
- (i) Opportunity to participate on one or more roadmapping teams
 - (ii) Opportunity to submit proposals in response to NAWI RFPs, be members of teams that submit proposals, and/or provide cash or in-kind cost share support
 - (iii) Invitations to quarterly program update webinars and the NAWI annual Alliance Meeting
 - (iv) Alerts regarding NAWI's public library of on-line resources including video content, open-source software, and professional development programs
 - (v) Access to Opportunities to meet with top researchers in the water treatment space, and to network with other organizations that are Alliance members
 - (vi) Alerts for public opportunities for technology licenses
 - (vii) A forum to advertise employment opportunities relevant to the water treatment community

EXHIBIT B

NAWI Alliance Code of Conduct

The NAWI Alliance is a large collaboration with Associate Members from many different and diverse backgrounds. NAWI strives for an inclusive and respectful environment for NAWI Alliance Associate Members independent of their background, age, and stage or path of career. In order to operate as set forth in Sections 3, 5 and 6 of this Agreement, and to ensure equal benefits for Alliance Members described in Exhibit A, we have created this Code of Conduct which shall apply equally to all Alliance Members and their individual Associate Members.

Discrimination

Associate Members of the NAWI Alliance should treat each other with equity and respect, regardless of personal attributes including but not limited to: race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law because of age or citizenship or for other arbitrary or personal reasons.

Engagement and Participation

The NAWI Alliance is not intended to be an organization which Alliance Members and their Associate Members sign-up for and participate sparingly. As the Energy-Water Desalination Hub is the first major federal investment in water R&D in several decades, NAWI requires broad participation and meaningful engagement to maximize the impact of this investment. The NAWI Alliance was created to bring together water experts across many disciplines to help drive the research agenda. As such, NAWI Alliance and their Associate Members are required to participate the Annual Meeting, engage in an online platform once created, network with university and national laboratory researchers, ensure that their Alliance and Associate Member contact information is current, and participate (virtually or in person) in at least one or two end-user roadmapping effort.

Cost Share

Alliance Members should properly account for all allowable cost share, whether in the form of cash, in-kind or another allowable form, to advance the research mission of the hub. Alliance Members and their Associate Members will submit required and accurate NAWI cost-share forms in a timely manner.

Fair Use of NAWI Materials

Alliance Members will have the opportunity to access data, software and other online content for their use and the use of their organization, subject to the provisions in Section 5 of this Agreement. NAWI encourages NAWI Alliance Members to access these materials frequently to help advance the research mission of NAWI, and to handle all material appropriately and responsibly.

Truthful and Accurate Data Sharing

Alliance Members are under no obligation to share data, but data sharing is highly encouraged across NAWI for roadmapping, analysis and other uses. If an Alliance Member and their Associate Members shares data, the data shall be accurate to the best of the originator's knowledge. Deliberately sharing or promulgating false and incorrect data is grounds for loss of membership.

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EXHIBIT C

ANTITRUST POLICY STATEMENT

Alliance Members shall strictly comply with all laws and regulations applicable to its activities, including, without limitation federal and state antitrust laws. Alliance Members shall assist one another in complying with federal and state antitrust laws. No Alliance Member will neither knowingly permit nor condone anti-competitive behavior, whether willful or inadvertent, in connection with participation in NAWI.

Antitrust Laws

Antitrust laws seek to preserve a free competitive economy. As a general rule, competitors may not restrain competition among themselves through understandings or agreements as to fixing prices, allocating geographic markets, unfair or deceptive practices, setting profit levels, boycotts, and most other anticompetitive actions. A more complete discussion of federal and state antitrust laws is available upon request from NAWI.

Antitrust laws are sometimes unclear in terms of applicability to any given conduct. Whether or not an antitrust violation exists depends purely on the specific conduct and facts involved in each instance. Notwithstanding the uncertain nature of antitrust law, penalties for violating these laws, both civil and criminal, are severe.

Member Responsibilities

NAWI makes every effort to design and monitor its programs to ensure compliance with antitrust laws. Each Alliance Member has a duty and sole responsibility under the law to avoid and prevent antitrust violations, including to overtly object and refuse to participate in any activity that poses antitrust risk until that risk is properly assessed and cleared by legal counsel or other qualified advisor. Specifically, each Alliance Member agrees to abide by the following terms:

1. Neither NAWI nor any of its committees or programs shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, among and between competitors with regard to prices, terms or conditions of sale, distribution, volume of production, territories, customers, credit terms, or marketing practices.
2. Alliance Members shall not discuss, communicate or engage in any other exchange between or among members with regard to prices, pricing methods, production quotas or other limitations on either the timing, costs, or volumes of production or sale, or allocation of territories or customers.
3. Alliance Members shall not engage in any activity or communication that might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods and services, or to prevent any business entity from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market.

4. No Alliance Member who otherwise meets the qualifications set forth therein, shall be rejected for any anti-competitive purpose.
5. If information, materials or reports of NAWI for the use of the membership or participation is significant to third parties or others in the industry, then such information, material and reports will be made available by NAWI to all such persons, on such reasonable terms and conditions as it may prescribe, in order to carry out its purposes.
6. To the extent that the purposes of NAWI require collaboration among two or more members or representatives of members in furthering those purposes, the members or their representatives shall undertake such collaboration only to the extent necessary to achieve such purposes, and shall report the results of any collaboration undertaken on behalf of NAWI to NAWI. Any such collaboration shall exclude:
 - a. The exchange of information between or among members relating to any aspect of competition among the members, except to the extent that the exchange is reasonably required to accomplish the purposes of NAWI and is unlikely to have any impact on competition between or among members. In case of doubt, the collaborating members should consult counsel for NAWI with regard to the proposed exchange or the format in which the exchange should take place.

Any agreement or conduct restricting the production of any product by any Alliance Member, limiting the manner in which any Alliance Member markets or promotes any product, requiring the purchase or sale of any product by any party, or limiting the sharing of intellectual property by, between, or among Alliance Members is prohibited. The Alliance Members may consult with counsel for NAWI with respect to any limitation NAWI may desire lawfully to impose on behalf of NAWI with respect to the results of the collaboration.