



NM PRODUCED WATER RESEARCH CONSORTIUM MEMBERSHIP AGREEMENT (2023)

This Agreement between the Regents New Mexico State University (the “*University*”) and _____ (“*Member*”) (each individually a “*Party*”, and collectively, the “*Parties*”), takes effect on January 1, 2023 (“*Effective Date*”).

Background

- The State of New Mexico, Environment Department (“*NMED*”) has designated the University to undertake and oversee activities for an NM Produced Water Research Consortium (“*Consortium*”).
- The purpose of the Consortium is to facilitate collaborative research and to foster interactions that advance scientific research and technology development necessary to guide statewide regulation of treated produced water uses outside the oil and gas industry (the “*Purpose*”).
- The University has invited persons or organizations to obtain membership in the Consortium based on their research or direct capabilities applicable to the Purpose, for projects of mutual interest and benefit to the University and to the person or organization.
- The Parties consider this Agreement’s activity to:
 - Further the University’s research and instructional objectives consistent with the University’s status as a non-profit, tax-exempt, educational institution; and
 - present potential benefits for both the University and any entity or applicable Affiliate of that entity that has current Consortium membership status as set forth under this Agreement (each, a “*Consortium Member*”) through data, improved methods and know-how, or discoveries that may result from the Consortium.

Agreement

The Parties agree as follows:

I. Consortium Operation.

A. Definitions.

1. “*Operating Plan*” means the Consortium’s official and current management plan as set forth in Exhibit A.
2. “*Sponsor*” means any entity that has donated funding to the Consortium to support the Consortium research as set forth in Exhibit A.

B. Membership Role. Member must provide support to University and each other Consortium Member, as further set forth under this Agreement.

C. Sponsor Status. Sponsor status is to encourage funding to accelerate testing, evaluation, and deployment of cost-effective technologies to enhance produced water reuse and eliminate, as appropriate, fresh water use in the oil and gas sector. Furthermore, Member may elect to be a Sponsor at one of the Sponsorship levels set forth in Exhibit A, by indicating Sponsorship status and level upon written notice to the University.



- D. Governance. Member accepts the Operating Plan in governing the Consortium’s operation and Member’s conduct applicable to that operation. This Agreement prevails upon any conflict between its provisions and the Operating Plan, although the Agreement remains subject to the NMED MOU.

II. **Membership.**

- A. Inception. Membership in the Consortium is open to each invited person or organization on an annual basis. Membership rights under the Consortium take effect immediately when a person or organization has signed the Agreement and has provided its first payment of dues as set forth under the Agreement.
- B. Continuance. Nothing under this Agreement obligates Member to remain a Consortium Member or pay any amount beyond the current year under the Agreement’s term. Because research of the type to be done by the Consortium takes time – and research results may not be obvious immediately – Member should understand that Consortium membership and participation of less than two years may produce only a limited benefit.

III. **Financial.**

- A. Amount Due. In exchange for each Consortium Member privilege set forth under the Agreement, Member annually must pay to University non-refundable annual membership dues of **\$500**. Member is responsible for its own tax liability and must not hold University liable for any such tax.
- B. Invoicing. University is entitled to submit an initial invoice to Member for the payment of the annual dues (prorated if applicable) no later than 30 days after signing this Agreement. For each subsequent year during the Term, University is entitled to invoice Member no later than June 30 of the then-current year under the Term.
- C. Payment. Each invoice is due and payable in full 30 days after Member receives the invoice. Member shall make dues payable to “New Mexico State University” with reference to NMPWRC membership and mail to:

ATTN: Monica Dunivan
NM Produced Water Research Consortium, MSC Eng NM
P.O. Box 30001
New Mexico State University
Las Cruces, NM 88003

Electronic payment or wire transfer is available upon agreement between Member and University.

- D. Funds Use. University shall use membership dues and sponsorship funds for funding of Consortium activities and projects according to University’s standard procedure for sponsored projects.
- E. No Refund. University has no duty to provide to Member any refund or waiver of fees paid if, during the Term:



1. Member terminates under the Agreement;
2. two or more Consortium Members merge with each other;
3. Member is acquired by another Consortium Member; or
4. any combination of Consortium Member companies results from merger, acquisition or otherwise.

IV. **Term; Termination.**

- A. **Duration.** The Term is one year, beginning on Effective Date, subject to renewal or earlier termination.
- B. **Renewal.** The Term renews for successive one-year periods, upon payment of membership dues in accordance with Section III.C.
- C. **Termination.** If a Party commits any material breach of this Agreement, and has failed to remedy that breach as of thirty days after receipt of written notice of that breach from the other Party, then the nonbreaching Party is entitled immediately to terminate this Agreement. That termination is in addition to any other remedy that the nonbreaching Party has at law or in equity.
 1. *By University.* Upon any termination by University, Member's membership automatically ceases and Member has no further rights under this Agreement except those rights identified in Articles VII, X and XI. University also has a right immediately to terminate the Agreement via written notice to Member:
 - a. if University has not received payment as of 30 days after Member receives an annual membership dues invoice; or
 - b. no later than 180 days before the termination takes effect, upon University's decision to cease its Consortium role or to discontinue the Consortium otherwise.
 2. *By Member.* Member also has a right to terminate this Agreement immediately for convenience by giving University written notice, provided that Member will not be entitled to a refund of any funds already paid to the University.
- D. **Survival of Provisions.** Each Agreement provision that by its nature is intended to survive expiration or termination of this Agreement, including specifically Articles VII (entitled, Confidentiality) and VIII (entitled, Liability Allocation):
 1. survives that expiration or termination; and
 2. remains in effect under applicable law or as the Agreement specifies otherwise.

V. **Proprietary Rights.** "*Consortium Invention*" means any invention or discovery conceived and actually or constructively reduced to practice in performing Consortium-supported research.

- A. **Testing of Acquired Member Information.** Any improvement in technology design or process operations of acquired Member process or technology information identified during performance testing and evaluations supported by the Consortium:

1. is to be acknowledged by each Party or other Consortium Member as operational testing data; and
 2. does not constitute a Consortium Invention.
- B. Invention Ownership. All Consortium Sponsors jointly own each Consortium Invention.
- C. Duty of Disclosure. Within 3 months of discovering any Consortium Invention, NMSU shall publish literature disclosing the Consortium Invention to the public in accordance with Article VI. Such publication shall not include information that the Consortium Members have identified for confidentiality pursuant to VI.B.1.b.
- D. Non-Assertion. Each Party must not assert enforcement of any patent or other intellectual property rights with respect to any Consortium Invention against the University or other Consortium Members.
- E. Equipment. Unless the Consortium Members specify in writing otherwise, University retains title to any equipment purchased for Consortium use with funds provided wholly or in part by Consortium Members under this Agreement.

VI. Publications; Publicity.

- A. Definitions.
1. “*Disseminator*” means – for this Article VI’s purposes only – Member, Director, Manager, or other Consortium participant.
 2. “*Document*” means any record, writing or electronic transmission that describes a Consortium Investigation Result.
 3. “*Graduate Paper*” means a student’s thesis or dissertation.
 4. “*Investigation Result*” includes, but is not limited to, any laboratory or research analytical test data or sampling data and analysis results, test and evaluation data, technology operational cost and performance data and results, engineering modeling data and analysis results, and technical evaluations and analysis results.
 5. “*Member Information*” means Member’s nonpublic proprietary information.
 6. “*Publication*” or “*Publish*” means the occurrence or existence of:
 - a. a spoken or written communication provided, issued or made to the public on behalf of the Consortium; or
 - b. a public disclosure of an Investigation Result, in whole or in part, or summary – including, but not limited to a public use of an invention based on that result – that could:

- i. bar availability of patent protection in any foreign jurisdiction; or
 - ii. trigger a one-year grace period in the U.S. within which a U.S. patent application must be filed.
 - 7. “*Review Period*” means four weeks before the time of presentation or submission to any journal or other publication.
 - 8. “*Trade Identity*” means Member’s trademark, logo, trade name or other source-identifying item.
 - 9. “*Working Group*” means any Consortium technical group or sub-group composed of Consortium Members.
- B. Preliminary Review.
- 1. *Procedure.* With respect to any Publication comprising a presentation or manuscript that University intends to disclose or Publish (whether by teaching or otherwise) otherwise, University must:
 - a. provide to each Member a confidential draft copy no later than the beginning of the Review Period; and
 - b. before presenting or submitting a Publication, comply with any request by Member made during that period to redact any reference to or data regarding Member or Member Information in that Publication.
 - 2. *Redaction Sufficiency.* Member is considered to have affirmed a redaction’s sufficiency if University has not received any further written redaction request from Member as of ten business days after University has sent that redaction to Member.
- C. Public Disclosures.
- 1. *Prior Approval.* Before releasing any Publication on behalf of the Consortium, a Disseminator – to the extent practicable no later than thirty days in advance – must send in writing to the Members for preapproval a notice describing that Publication. The Program Director has discretion:
 - a. to grant or deny that approval, based upon a determination of whether the Publication is consistent with the Purpose and this Agreement; and
 - b. upon determining that Disseminator has violated that notice requirement: promptly to issue a statement to clarify that Disseminator is not speaking on behalf of or representing the Consortium or its other Members.
 - 2. *Disclaimer.* Disseminator must cause any Consortium-related statement made, document shared or other Publication that each Member has not reviewed and approved to include the following disclaimer:

“The contents of this statement or document have not been reviewed, approved or endorsed by the full membership of the NM Produced Water Research Consortium.”



- D. Release; Review; Identification. Despite any contrary provision in Exhibit A, but subject to applicable law including the New Mexico Inspection of Public Records Act:
1. the Consortium operates according to National Academy of Science eighty-percent supermajority voting in deciding whether to release to the public any final Document;
 2. University must provide to each Consortium Member during a three-week period a so-called “first look” opportunity to review any draft Document before University releases that Document to the public;
 3. Member has a right to opt out of being named in connection with any Document, Publication, or other related information, spreadsheet or data base that is:
 - a. generated by any Working Group; and
 - b. made available for review and comment outside that Working Group;
 4. upon obtaining Sponsor status, Member has a right to describe its Sponsor level in any public communication; and
 5. Member must include in any Publication that includes any Consortium Investigation Result a statement that indicates substantially as follows:

“This document includes findings generated from the NM Produced Water Research Consortium.”
- E. Internal University Disclosure. Subject to the foregoing and Article V – and University’s duty not to take any action that could bar the availability of patent protection in respect of Member’s joint or sole invention – University retains discretion to use:
1. any Investigation Result, for its own teaching and educational purposes without payment of royalties or other fees; and
 2. internally by itself any Investigation Result, if the Member has provided prior written consent after having reviewed the full text proposed to be so used.
- F. Student Thesis or Dissertation. Under no circumstance is publication of any Graduate Paper for which funds are derived from the Consortium subject to delay for longer than ninety days after conferral of the student’s degree. But to the extent that the Graduate Paper contains any reference to or data regarding Member, Member’s invention or Member Information:
1. University must disclose to Member within 60 days of a Consortium funded research project’s start date of any student’s intent to include a Graduate Paper as a product of any Investigation; and
 2. Member has a right to request to (and University must) redact that reference, data and Member identity and Member Information before Publication.
- G. Trade Identity. Each Party must obtain written consent from any other Consortium Member before using that other Consortium Member’s Trade Identity in any advertising



or Publication relating to this Agreement's subject matter unless this paragraph specifies otherwise.

1. *Concerning Member.* So long as Member is a party to this Agreement and with prior written permission, University has a right reasonably to use Member's Trade Identity for the sole and express purpose of identifying Member as a Consortium Member in any Consortium communication.
 2. *Concerning University.* Member has discretion to use University's name without prior University approval when and as necessary for Member to supply any information that Member may be required to disclose in order to comply with applicable law. But Member has no right to state or imply that University endorses or supports a particular investment, stock purchase, product, or treatment.
- H. Copyright. University owns the copyright in any Publication, except to the extent that University in writing has committed otherwise, or has waived ownership of copyright in favor of authors under University's policy.

VII. **Confidentiality.** In the normal and routine operation of the Consortium as detailed in this Agreement, a need may exist for the University or a Consortium Member to disclose Acquired Information. In that event, disclosure is subject to this Article VII.

A. Definitions.

1. *"Acquired Information"* means Proprietary Information of any Consortium Member.
2. *"Proprietary Information"* means a Consortium Member's proprietary or confidential technology, information, and data, and includes such information that has been aggregated and anonymized under this Agreement.

B. Hub and Spoke.

1. *Isolation.* The Parties intend University to the extent practicable to have a so-called "hub-and-spoke" confidentiality relationship to Proprietary Information in which:
 - a. only University – and no other Consortium Member – has access to that information unless the contributing Consortium Member in writing authorizes otherwise; and
 - b. University engages and designates a third-party clearing house to aggregate and anonymize Proprietary Information and other Consortium information to limit its applicability to public information disclosure mandates.
2. *Limited Duty upon Member.* For clarity, and subject to Article VII.D. Restriction, this Agreement does not impose upon Member any confidentiality obligation with respect to information and material that any other Consortium Member discloses to Member.



3. *No Duty Imposed upon Other Consortium Members.* Likewise, other Consortium Members have no expectation of confidentiality under this Agreement as to information and material that they disclose to other Consortium Members.
- C. Notation.
1. *Written Disclosure.* For any written disclosure, the disclosing Party must designate the information as Proprietary Information.
 2. *Unwritten Disclosure.* For any disclosure other than in writing, the disclosing Party must:
 - a. identify the information as Proprietary Information at the time of disclosure; and
 - b. no longer than 30 days after disclosure, confirm in writing to each receiving Consortium Member that the information is Proprietary Information.
- D. Restriction. Unless this Agreement specifies otherwise, for a five-year period after the date of that disclosure, the receiving Consortium Member must:
1. use a reasonable degree of care to prevent its employees from any inadvertent, accidental, unauthorized or mistaken disclosure or use of Proprietary Information disclosed under the Agreement;
 2. use the disclosing Party's Proprietary Information only for this Agreement's purposes; and
 3. not publish or disclose that information otherwise.
- E. Excluded Subject Matter. The restrictions of this Article VII do not apply to Proprietary Information that is:
1. known or becomes publicly known through no fault of the receiving Consortium Member;
 2. learned from a third party that is entitled to disclose that information;
 3. already known to or developed by the receiving Consortium Member before receipt from disclosing Party, as shown by the receiving Consortium Member's prior written records;
 4. the subject of prior written permission from the disclosing Party for the receiving Consortium Member to publish;
 5. required to be disclosed by court order or operation of law including, without limitation: the New Mexico Inspection of Public Records Act; or
 6. independently developed by the receiving Consortium Member's personnel who are not privy to the disclosing Party's confidential information.
- F. Internal Dissemination. A receiving Consortium Member may disseminate Acquired Information to the receiving Consortium Member's employees and their Affiliate's employees requiring access for Agreement purposes, which includes exercising rights



granted by this Agreement. But in making that dissemination, the receiving Consortium Member or Affiliate must apprise each such employee of that employee's duty to:

1. maintain that information in confidence; and
2. not use that information for any purpose other than in accordance with this Agreement.

G. Inadvertent Disclosure. A Party is not liable for any inadvertent disclosure of Acquired Information, but each Party must use reasonable efforts not to disclose Acquired Information. If a Party realizes that it or the other Party has inadvertently disclosed any Acquired Information to a third party, the Parties promptly must confer as to what course of action is appropriate under the circumstances. The Party that made the inadvertent disclosure must:

1. promptly notify the third party that an inadvertent disclosure had been made of confidential materials; and
2. request the third party promptly to return all copies of the disclosed Acquired Information.

H. Disposal. Upon the disclosing Party's written request, the receiving Consortium Member must retrieve and return or destroy all material, including any copy, containing any of the Acquired Information. But the receiving Consortium Member has a right to keep one copy for archival purposes only. The receiving Consortium Member may retain any electronic copies of Acquired Information contained in automatic data back-up or archival computer records; provided that, the retained Acquired Information will remain subject to the provisions of this Agreement until destroyed.

VIII. **Liability Allocation.**

A. Definitions.

1. "*Economic Harm*" means any consequential or special damage or indirect loss including, without limitation: any loss of profits, loss of production, or loss of use.
2. "*Party*" – for this Article's purposes only - includes any applicable Affiliate of that Party.
3. "*Warranty*" means any representation or warranty, express or implied including, without limitation: any implied warranty of merchantability or fitness for a particular purpose.



- B. Warranty.
1. *Limited Scope.* Member warrants that with respect to any Proprietary Information that it discloses under this Agreement:
 - a. it has a right and full authority to disclose its Proprietary Information to a receiving party under this Agreement, including to other Consortium Members; and
 - b. performance of any Consortium activity will not breach any other obligation of confidentiality or other obligation arising out of or in connection with that Proprietary Information.
 2. *Disclaimer.* Unless the Agreement sets forth otherwise, Member
 - a. expressly disclaims any Warranty in connection with any Consortium deliverable or donated information that the Member provides under this Agreement; and
 - b. assumes no responsibility or obligation, or confers any right by implication, estoppel or otherwise, by providing that information.
- C. Responsibility. Member is responsible for any harm arising from its activities relating to Consortium and any use by Member or Member's licensee of any Consortium deliverable.
1. *Separate Commitment.* Section VIII.C. does not limit Member's liability or obligation under any other commitment to which Member is legally bound for the purpose of creating a Consortium deliverable.
 2. *Multiple Factors.* Section VIII.C. applies whether Member's negligence, fault or strict liability is a concurrent or contributory factor of an occurrence in question. Member's obligations under this Section VIII.C. are intended to protect the other Party against any consequence of Member's own joint, concurrent or contributory negligence, fault or strict liability.
- D. Liability Disclaimer. Member is not liable to the University or to any other Consortium Member in any action or claim for Economic Harm, irrespective of any foreseeability of that harm.
1. *Applicability.* The protection against Economic Harm applies in any action whether based on contract, negligence, either sole or concurrent and strict liability or other tort, statute or otherwise.
 2. *Waiver.* To the extent permitted by law, any statutory remedy that is inconsistent with this Agreement is waived.
- E. Risk of Loss. Member bears all risk of damage or loss to any equipment or supplies that Member loans to University under this Agreement, unless the damage or loss results from any willful or intentional act of University.
- F. Participant Liability. University releases Member from liability concerning any water sample that the Member provides to the Consortium, if either:



1. University has collected the water sample in conjunction with Member; or
2. Member has collected the sample according to a sampling and chain of custody protocol that University has provided to Member.

IX. Other Projects.

- A. Consortium-Related. Nothing in this Agreement is considered to prevent the Consortium or a Consortium Member or any group of Consortium Members from entering into a separate sponsored research commitment. Upon any inconsistency between that separate commitment and this Agreement, that separate commitment takes precedence insofar as that separate commitment does not adversely affect the rights to intellectual property or confidentiality granted to Member under this Agreement.
- B. External. Nothing in this Agreement restricts or impairs the right of any Party to conduct its own research, either independently or in conjunction with others, even though that research may parallel or overlap an Investigation. Any Party conducting that separate research has no obligation under this Agreement, with respect to the use or disposition of the results of that independent research including, without limitation all information and data resulting from that separate research.

- X. **Export Control.** “*Export Laws*” means the Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR) or the International Traffic in Arms Regulations (ITAR), 22 CFR §§ 120-130. Member does not anticipate exchanging any information, data or software that is Export Controlled under the Export Laws. In addition to the requirements of Article VII of this Agreement, Member must give University 15 days’ advance written notice of Member’s intention to deliver any information, data, software, technology, or material that is Export Controlled. Member must take any measure that is necessary to ensure that any Export Controlled information, data, software or materials provided to any other Consortium Member under the Agreement is not exported from the United States or re-exported to any other country without first complying with applicable Export Control laws and regulations.

XI. Miscellaneous.

- A. Definitions.
 1. “*Disclosure Exception*” means a disclosure occurrence mandated under applicable law, to protect or pursue a legal right, or to enforce or challenge an award in any *bona fide* legal proceeding before a court or other judicial authority.
 2. “*Mark*” means any trademark, service mark, trade name, word, letter, symbol, design or logo owned by Member.
 3. “*Induce*” means to offer or make any payment or offer or give anything of value.
 4. “*Political Figure*” means any government official, any immediate family member of any government official or any political party.
- B. Variation. No addition to or variation of this Agreement is of any force or effect unless it is expressly recorded in writing by signed or electronic hand-written signatures of both Parties.



- C. Governing Law. This Agreement – and any claim relating to or arising out of the Agreement or its breach – is to be governed and construed according to the laws of the State of New Mexico, excluding that State’s choice-of-law principles.
- D. Disputes.
1. *Notice and Cure.* If a dispute arises out of or relates to this Membership Agreement or its breach, an aggrieved Party must provide to the other Party notice of breach, with opportunity to cure to the extent practicable.
 2. *Negotiation.* If the other Party fails to cure that noticed breach within any time period specified in the notice or promptly if not so specified, then the Parties in good faith must undertake settlement negotiation.
 3. *Mediation.* If the Parties fail after a reasonable time to reach a negotiated settlement, then the Parties must try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration.
 4. *Arbitration.*
 - a. *Commencement.* If the Parties after 90 calendar days of beginning mediation have not settled the dispute, then either Party may submit the dispute for final settlement by arbitration:
 - i. by a single arbitrator; and
 - ii. administered by the American Arbitration Association under its Commercial Arbitration Rules.
 - b. *Court Filing.* The prevailing arbitration Party is entitled to enter any judgment on the award rendered by the arbitrator in any court having applicable jurisdiction.
 - c. *Venue.* The place of arbitration shall be Houston, Texas.
 - d. *Procedure.* The Parties intend any decision of the arbitration to be in writing, reached no later than 90 days after an arbitrator is appointed and not to be made public.
 - e. *Confidentiality.* Unless the Parties expressly decide in writing to the contrary or a Disclosure Exception applies, each Party must keep confidential:
 - i. any award in any arbitration;
 - ii. all materials in the proceedings created for the purpose of the arbitration; and
 - iii. each other document that the Parties produce in the proceedings that is not in the public domain otherwise.

- f. **Attorney’s Fees.** The prevailing Party in any such arbitration arising out of the interpretation or application of any provision of this Agreement may be awarded reasonable attorney's fees, court costs and expenses, including those associated with any appellate or enforcement proceedings.

- E. **No License or Entity Formation.** Other than as expressly stated herein, nothing in this Agreement is considered to create in Member any right with respect to information, operations, research, patents or publications owned, held, undertaken, or prepared by any other Consortium Member. The Consortium Members do not intend to create a partnership, joint venture, association, or trust of any kind between any Consortium Members. The Consortium Members’ duties, obligations, benefits, and liabilities are several but not joint or collective, and Member is individually responsible for its own obligations.

- F. **Compliance; Verification.**
 - 1. ***Ethics.*** The University and Member must exercise reasonable care and diligence to prevent its personnel from making, receiving, providing or offering any substantial consideration for the purpose of improperly influencing the relationship between the Consortium Members. This obligation applies to Member’s activities in its relations with any other Consortium Members or other Consortium Members’ employees, representatives and their families, and any vendor, contractor or consultant that performs Consortium work. Member must promptly notify the University of any violation of this paragraph.

 - 2. ***Audit.*** If there is reasonable belief that Member has not complied or is not complying with Section XI.F.1, any representative authorized by the University may (at their cost) audit any applicable record of Member for the sole purpose of determining whether Member has complied with this paragraph. Member must provide to the University access at all reasonable times to any non-privileged Consortium-related record during the period that Member is obligated to preserve the record, for the purpose of verifying the record-holder’s Agreement compliance.

- G. **Assignability.** This Agreement is assignable by Member to an Affiliate or to the successor in title of its entire business and is subject to the acceptance by that Affiliate or successor of all of Member’s obligations under the Agreement. Despite that assignment, Member remains bound by each confidentiality requirement under Article VII.

- H. **Severability.** If a tribunal of competent jurisdiction finds any part of this Agreement to be void or unenforceable, then the remaining provisions remain in full force and effect. Furthermore, in lieu of that invalid part, a provision as similar in terms to that invalid part as may be possible, legal, valid, and enforceable is to be automatically added to this Agreement.

- I. **Entire Understanding.** This Agreement states the entire understanding between the Parties regarding its subject matter, and supersedes, cancels and merges any prior representation, understanding, covenant, or commitment, whether oral or written, with

respect to Consortium membership. No change, alteration, or modification to this Agreement has effect unless it is in writing and signed by an authorized representative of each Party.

J. Antitrust.

1. *Relevant Considerations.* Member acknowledges that antitrust considerations include, but are not limited to:
 - a. commitments among competitors to fix prices, limit output, divide or allocate markets or customers, or establish conditions governing dealings with third parties;
 - b. certain commitments “tying” or conditioning the sale of one product or service on a buyer’s purchase of another product or service or requiring the buyer to deal exclusively with the seller; and
 - c. actions by dominant firms to unreasonably hamper competition.
2. *Compliance Arrangement.* Despite any contrary Exhibit B provision:
 - a. Member may terminate any discussion with any other Consortium Member if Member has a reasonable concern regarding compliance with U.S. antitrust law;
 - b. University must send out a meeting agenda to each Working Group meeting in advance of that meeting, and recorded minutes of that meeting as soon as practicable afterward; and
 - c. Member retains discretion whether to participate in a particular Working Group.

K. Conflict of Interest. No representative of the Consortium, including any Consortium Member or University representative, may engage in any of the following activities:

1. Give to or receive from any director, employee or agent of a Consortium Member or its Affiliate in connection with this Agreement, any gift, entertainment or other benefit of significant cost or value, or any commission, fee or rebate.
2. Enter into any business arrangement with any director, employee or agent of a Member or its Affiliate in connection with this Agreement without the Consortium’s prior written consent.

L. Improper Influence. Neither Party may Induce any Political Figure to influence any act or decision by any government official, government, government instrumentality, party, or public organization, or to gain any other advantage for Member or its Affiliates arising out of this Agreement. In addition, no University representative may Induce any person if the representative knows or has reason to believe that any portion of the payment or thing of value will be given directly, indirectly or through a third party to any Political Figure.

M. Reporting Violations. University immediately must notify Member of any violation of Sections XI.K or XI.L, or breach of the warranty set out in Section VIII.B.



- N. Records Retention and Right to Audit. University shall maintain and retain true and correct records in connection with all matters related to this Agreement until at least 24 months from the end of the calendar year in which this Agreement is terminated. Member (or its representative) may inspect all records at any time within the stated retention period to determine University’s compliance with Section XI.L.
- O. Member Trademarks. University must obtain Member’s written consent before using any Mark. If the Consortium uses a Mark, University acknowledges that any use of the Marks inures to the benefit of Member.

Signed:

New Mexico State University _____ {Member Name}

 Typed Name: _____
 Title: _____
 Date: _____

 Typed Name: _____
 Title: _____
 Date: _____

Attn: Monica Dunivan
 NM Produced Water Research Consortium
 New Mexico State University, MSC ENG NM
 P.O. Box 30001
 Las Cruces, NM 88003
 Telephone: 575-646-2913
 e-mail: morascon@nmsu.edu

Contact Information for Member:



Exhibit A

NEW MEXICO PRODUCED WATER RESEARCH CONSORTIUM OPERATING PLAN



2023 NEW MEXICO PRODUCED WATER RESEARCH CONSORTIUM OPERATING PLAN

Background

The New Mexico Environment Department (“*NMED*”) and the Regents of New Mexico State University (“*NMSU*”) have entered into a Memorandum of Understanding to create a produced water research consortium to support *NMED*’s implementation of New Mexico House Bill 546.

Goals

The New Mexico Produced Water Research Consortium (*NMPWRC*) (*Consortium*) is organized under that *MOU* to develop a research framework to fill scientific and technical knowledge gaps necessary to establish regulations and policies for the treatment of produced water. *NMED* requires any future regulation and policy for produced water management to be protective of public health and the environment, rooted in sound science and consistent with all applicable law. The *Consortium* is designed to strengthen and accelerate the development of public-private partnerships to build and grow future sustainable economic development opportunities in the State.

Value Proposition

Through the *Consortium*, New Mexico intends to continue to lead the country in advancing scientific and technological solutions related to the treatment and reuse of produced water generated by the oil and gas industry. The *MOU* is also intended to stimulate economic investment opportunities in New Mexico under the leadership of *NMSU*, which will rely on public and private funding to carry out this research.

Participation

The *Consortium* is an association of universities, industrial companies, organizations, and government agencies, with the objective of participating in common activities and pooling of resources to achieve a common goal in research and public service. Participant categories include, without limitation, the following:

- “*Academic Institutional Member*,” comprising any public or private institution, including higher education and K-12;
- “*Corporate Member*,” comprising any legally incorporated business or industry;
- “*Member*,” as defined in Article I of the *NMPWRC* Membership Agreement;
- “*Non-Governmental Organization*,” comprising any nonprofit organization that operates independently of any government -- typically one whose purpose is to address a social or political issue;
- “*Sponsor*,” as defined in Article I of the *NMPWRC* Membership Agreement
- “*Government Agency*” comprising interested government agencies

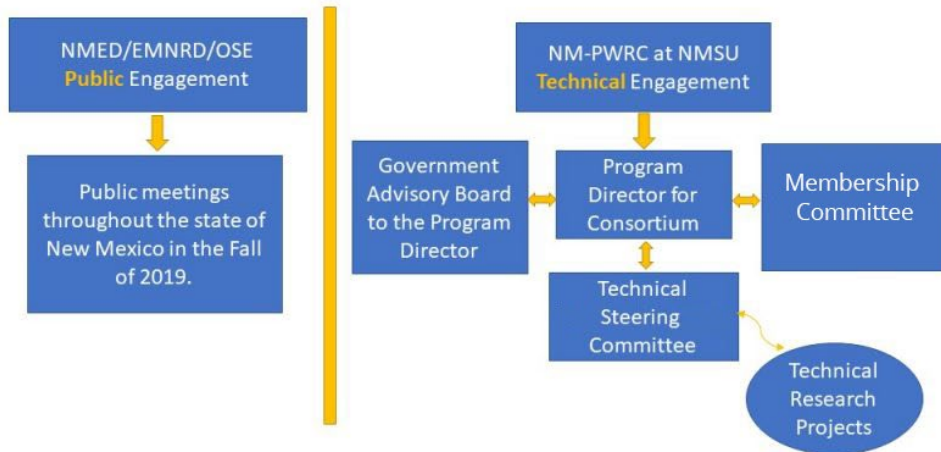
Article I: Consortium Organizational Structure

NMSU will manage the Consortium membership and process, operated under the umbrella of NMSU’s Office of Strategic Initiatives within the Office of the Chancellor. Membership status is established upon signature by both parties on the NMPWRC Membership Agreement and payment of applicable membership fee. NMSU reserves discretion whether to accept a party as a member to ensure the integrity of the Consortium mission according to established research consortium practices.

The Government Advisory Board (“Board”), the Membership Committee (“Members”) and the Technical Steering Committee (“TSC”) will support the NMPWRC.

The diagram below illustrates the NMPWRC organizational structure.

Produced Water Engagement



The organizational structure is designed to ensure broad engagement while leveraging the technical and regulatory resources and knowledge within and external to New Mexico.

Article II: Consortium Management and Operations Structure

Each **Member** is entitled to participation in the Consortium and to share equally in the results of any research funded by the Consortium.

The **Program Director** is the administrative head of the Consortium, and is responsible for coordination and oversight of the fiscal, personnel, research, reporting, and outreach efforts. The Program Director works closely with the Board, the Council and TSC, and program and research managers to ensure that:

- the research projects are focused on efficiently and cost-effectively facilitating the adoption of produced water treatment, reuse and reapplication technologies; and



- science-based regulations are protective of human health and the environment.

Program and Research Managers manage the alignment and coordination of research projects for the Consortium with the goal of conducting “fit-for-purpose” water treatment research that provides guidance on policy, regulations, and the cost and performance associated to enhance each use or reuse of produced water. Those managers ensure outreach to the public, industry, regulatory agencies, and other stakeholder groups of developed technology improvements to ensure timely implementation and adoption of produced water treatment and reuse that will protect the environment and human health.

The **Board** will provide oversight of the Consortium research and outreach efforts by reviewing and approving major program strategies and directions, verification of key resource budgets and allocations, and schedules and progress. Each year, the Board will report its findings to NMED and NMSU leadership, and the Members. The Board will be comprised of a senior-level representative from state and federal agencies including:

- New Mexico State University;
- NM Environment Department;
- NM Energy Minerals and Natural Resources;
- NM Department of Agriculture;
- NM Water Resources Research Institute;
- NM Office of the State Engineer;
- NM Department of Health;
- NM Game and Fish; and
- Other state and federal environmental, land and water management, and ecological resource protection agencies.

Sponsors are those groups who provide funding support to advance research in treatment and reuse of produced water generated by the oil and gas industry, with a commitment of 3-5 years. This multi-year commitment will ensure a robust research effort required to effectively address scientific and technical knowledge gaps necessary to establish regulations and policies for the treatment of produced water. Pooled Sponsor funding will be used to support operational and research needs of the Consortium. Each Sponsor entity will be granted automatic annual membership.

Sponsorship levels noted below are reflective of cumulative (calculated annually) financial commitment to the Consortium as follows:

- Platinum Sponsor \$2 million
- Gold Sponsor \$1 million
- Silver Sponsor \$500,000
- Bronze Sponsor \$250,000
- Affiliate Sponsor \$50,000



Financial commitments for Sponsorship may include cash and may also include any other resource specifically receiving approval as Sponsor support (e.g. in-kind resources such as vehicles, site equipment, and laboratory equipment).

The **Members** will serve to advise the Program Director on research roadmap priorities, including current research and technology gaps and emerging health and safety issues, opportunities for collaborative demonstration sites, environmental and regulatory considerations, and other relevant issues that impact the work of the Consortium. The Members will be supported by Faculty Fellows and student Interns, who will provide administrative and technical support at public meetings, workshops, and will help compile and record Consortium findings as needed, as well as help coordinate efforts with NMED.

Each Faculty **Fellow** is an individual with technical subject matter expertise who serves as liaison between the Member, researchers, NMED, and mentor university student interns working on behalf of the NMPWRC.

Student Interns are invited from the three New Mexico research universities to assist in various aspects of the Consortium as determined by the Program Director. The Interns can be paid directly by Consortium or involved through other means to be determined by each of the respective institutions.

The **TSC** will serve as an independent set of technical representatives of the Consortium Members to help establish Requests for Proposals (RFP), evaluate responses to submitted RFPs for funding, and review research and technology cost and performance data, and help prepare findings. The role of the TSC is to oversee the integrity and fairness of research opportunities, assess the quality and validation of the research results, and ensure a quality and focused research portfolio. Proposed TSC participants will be considered by the Programs Director, Research and Programs Managers, the Faculty Fellows, in consultation with the Board to select appropriate participants based on recognized technical expertise in areas such as:

- produced water issues and management;
- produced water treatment and testing;
- produced water public safety and health issues; and
- relevant alternative use research challenges, applications, costs, and impacts on water supply security and resiliency.

Funding

Research can result from funding from any combination of membership dues, sponsorships, or as a part of externally funded research. Externally funded research leveraged by NMPWRC funding must be approved by the Board prior to acceptance of an award, if and only if, NMPWRC funding is included as a cost-share or in-kind requirement in the respective research grant award.



Participation

TSC membership will include a minimum of twenty-five technical representatives selected from the major Member sectors to ensure broad input and oversight of the research program and research projects. This will include representatives from :

- Academia:
 - New Mexico and surrounding universities
- Oil and Gas sector;
- Midstream oil and gas water companies;
- State and federal health and natural resource agencies and laboratories; and
- Non-governmental organizations involved in natural resource and environmental issues.

Any TSC member is expected to recuse itself from review of any proposal that originates in whole or in part from that TSC member or its Affiliate (as defined in the Membership Agreement).

Article III: Consortium Research Program

The Consortium research program will consist of a portfolio of research projects evaluated and approved by the TSC with the intent of facilitating treatment technology research and technology development that can:

- accelerate the implementation and acceptance of policies and regulations for the use of treated produced water in New Mexico;
- support policies and regulations that protect the environment and human health; and
- be used as models nationwide.

Funded Core research projects are subject to compliance with terms outlined in the Membership Agreement and the directions identified by the TSC and Board.

Research projects consist of Core projects and Enhancement projects. Core projects are funded from pooled membership dues paid by Consortium members and pooled Sponsor funds. The TSC is responsible for evaluating and selecting Core projects based on research roadmap priorities recommended by the members and approved by the Board.

Enhancement projects are funded through additional financial means (but not membership dues or Sponsor pooled funding), specifically to enhance or accelerate a currently-funded Core project. In order to be included by the Consortium, an Enhancement project must contribute to the knowledge development of the Consortium and is subject to advance approval by the Program Director and the Board. The funding could come through proposals to other federal agencies, or directed funds from other private organizations.

Article IV: Financial Management of Consortium

Pooled membership funding is used to support operational and research needs of the Consortium. Annual membership dues are established as follows, depending on annual assessment :



- Corporate Member \$500
- Academic Institutional Member \$500
- Non-governmental Organization Member \$500

NMSU has an interest in ensuring that faculty participants in the Consortium obtain recognition from their Deans and Department Heads for Consortium-related research, public service and/or instructional activities. Consequently, each Core project proposal awarded by the Consortium – and any resulting award or applicable rejection is subject to normal University procedures for processing that submission.

The annual period for paying membership is based on calendar (January 1 – December 31), and is the same for each Member. The Program Director is responsible to ensure the timely payment of membership dues, as authorization to undertake work within the Consortium is dependent on their collection. Each Member must pay its dues annually as a lump sum. The

Annual membership dues and pooled sponsorship funding will be deposited in a pooled (termed “public service”) account at NMSU. This prime account is used as a “holding” account for membership dues and sponsorship funds. Membership dues and pooled sponsorship funds are then utilized to fund research projects, the Consortium’s administrative budget, and future encumbrances (e.g., planned procurement of large-scale instrumentation for the benefit of membership projects, etc.). A clear breakdown of how membership dues is allocated will be provided annually.

Research projects will be funded in an amount not to exceed **\$200,000** per year, not to exceed twenty-four months duration, and not to be granted any no-cost extension requests unless approved by the Board. Funded research project awards are limited to a twenty percent indirect cost rate, including Core and Enhancement research projects.