

Allied Geophysical Laboratories (AGL) Membership Agreement

THIS AGREEMENT is between the **UNIVERSITY OF HOUSTON (UH)**, on behalf of the Allied Geophysical Laboratories (AGL), at the UNIVERSITY OF HOUSTON, a public institution of higher education located in Houston, Texas, USA, under the governance of the Board of Regents of the University of Houston System (University), and “_____” (Member) as member of the Consortium for the Allied Geophysical Laboratories (AGL). Membership shall commence on, **October 1, 2015** and run through **December 31, 2016**. Membership is renewable annually thereafter by payment of the then-current annual membership fee.

1. CONSORTIUM RESEARCH PROGRAM

1.1 Purpose

A group of companies (hereafter called the Consortium) is interested in making possible and accelerating research in physical modeling, geophysical survey design and field acquisition, borehole geophysics, and the signal processing, analysis, and interpretation associated with such. The Consortium intends to carry out research in cooperation with the University of Houston’s AGL.

1.2 Funding

Each Member of the Consortium shall pay an annual membership fee to UH on behalf of AGL. AGL will use all of the funds derived from such membership fees to support the costs of the Consortium’s research and educational program, including, but not limited to: equipment, systems, and software; staff, student, and faculty salaries and expenses, indirect costs, and administrative charges.

1.3 Consortium Research Program

The scope of the research and development activities conducted by the Allied Geophysical Lab is included in Exhibit A, titled “2015-16 AGL Proposal”. Exhibit A is incorporated herein by reference and made a part of this Agreement. The Proposal documents more fully describe the research of the AGL. Any of the Proposal documents may be subsequently altered by mutual consent of all sponsoring Members of the AGL and the Principal Investigator of the laboratory; such consent will not be unreasonably withheld. Budget approval will be made by the University of Houston, Division of Research, in consultation with the AGL Director.

2. MEMBER OBLIGATIONS

2.1 Membership and Fee

Members shall, upon joining, pay UH a fee of \$45,000. for the 2015-16 membership. Subsequent yearly membership renewals will be at the annual fee of \$45,000.

2.2 Payment Terms

Member agrees to pay the applicable fee in one lump-sum payment within thirty (30) days of the signing of this Agreement and receipt of an invoice. Payment instructions will appear on the invoice.

Subsequent yearly membership renewals are subject to payment of the then-current membership fee.

2.3 Rights after Termination

Upon termination of its membership in the Consortium (including membership termination by non-payment of the annual fee), the Member shall assume immediately the status of any other non-member organization, and the Member's rights and privileges shall terminate except as specified in this Agreement.

3. MEMBER BENEFITS

3.1 Intellectual Property—Rights in Technology

Members have the right to review and use Research Results and to review and license Technologies, as set out in this Agreement, developed within the Consortium before it is offered to non-members. AGL must disclose intellectual properties to UH according to the University of Houston System Board of Regents Policy. Technologies developed under this Consortium Research Program shall be owned by the UH and shall be managed by the UH Office of Intellectual Property Management (OIPM) according to University of Houston Board of Regents Policy. Intellectual Property issues and approvals will be coordinated by the UH OIPM.

3.1 (a) Research Results

Research Results are defined as studies, reports, and the results of experimentation and analysis, leading to detailed geophysical understanding and best scientific practices. Members will be provided early access to non-proprietary research results that are achieved as a result of this Agreement. Model building, data acquisition, data processing, and computer algorithms developed under this Agreement will be made available to Members. Members will have access to M.S. and Ph.D. theses that result from research conducted under this Agreement. Copies of physical model data and field surveys resulting from this Agreement's research will be available to Members at their own expense. An AGL report will be distributed at the yearly review.

3.1(b) Intellectual Property

Intellectual Property or Technologies are defined as discoveries, innovations, or inventions, whether patentable or not, and including computer software, recognized in law as intelligent creations to which rights of ownership accrue, including, but not limited to, patents, know-how, and trade secrets. This Agreement covers only Technology, which results from the Consortium Research Program, and does not pertain to Technology developed by AGL under individual projects funded outside of the Consortium. However, it is recognized that Technology developed within the Consortium Research Program may rely upon Technologies previously developed by AGL or one or more of the Members through previous research prior to the creation of the Consortium.

If the previously developed Technology is owned by UH, Members will be entitled to a non-exclusive, worldwide, royalty-free license to that Technology for use within the Consortium's Research Program and as necessary for use of the Technology created by work under the Consortium Research Agreement as provided under 3.1(d). Should the Technology have other restrictions for use, those restrictions shall take precedence over this Agreement.

If the previously developed Technology is owned by one or more of the Members, AGL, with approval of the Member(s), will be granted a non-exclusive, non-royalty-bearing license to use the Technology in the Consortium's Research Program.

3.1(c) Disclosure

UH will disclose to all Members the Technologies created in the course of the Consortium Research Program, as soon as reasonably practical, but no later than the time the invention is disclosed to the UH Intellectual Property Committee, subject to the confidentiality provisions of Section 4 of this Agreement.

3.1(d) Licensing of Technology

Rights of First Refusal: Disclosure by UH of a Technology created by work under the Consortium Research Agreement is a triggering event for the actions described below. After UH has disclosed the creation of Technology to all Members, the following will apply:

After disclosure, as described in Section 3.1(d), each Member shall have the right to a non-exclusive, perpetual, royalty-free, worldwide license to use, but not sublicense, sell, transfer or lease the Technology (see Section 3.2, Restrictions on Use of Research Results and Technology).

3.1 (e) Royalty Rates

Royalty rates on each commercial development of the Technology resulting from the Consortium Research Program shall be negotiated by UH.

3.1(f) Government-Funded Research

AGL research may include support from grants or other funds derived from the United States government. In such instances, the government retains certain licensing rights as required by law, and this is recognized by the Parties to this Agreement. AGL agrees to provide the Consortium Members with copies of the pertinent licensing rights retained by the government.

3.1(g) Existing AGL Agreements

Certain license agreements exist between AGL and individual parties with respect to patents, copyrights, know-how, and other intellectual property arising out of that existing relationship. The parties agree that all rights granted or to be granted under such licenses shall not be affected by the provisions of this Agreement, whether within or outside the scope of the Consortium Research Program, with respect to Technology which existed on the effective date of this Agreement.

3.2 Restrictions on Use of Research Results and Technology

Consortium Members and their Affiliates are free to use the results of the research conducted and Technology developed under this Consortium Agreement. For the purpose of this Agreement, Affiliate, with respect to Member, shall mean any company or other legal entity other than the Member which, at the time in question, is directly or indirectly controlled by the Member. For the purpose of this definition, a particular company is (i) directly controlled by another company if that latter company legally owns fifty per cent or more of the voting rights attached to the issued share capital, or voting interest, of the first mentioned company; and (ii) is indirectly controlled by another company if a series of companies can be specified, beginning with that latter company and ending with the first mentioned company, so related that each company of the series (except the latter company) is directly controlled by one or more of the companies earlier in the series. Members and their respective Affiliates may make copies and prepare derivative works from the Consortium Research Results and Technology. In utilizing the Research Results and Technology developed, Members must be subject to confidentiality terms at least as restrictive as those appearing in Section 4, Confidentiality.

3.3 Equipment/Facilities and Additional Research

Membership in the Consortium facilitates access to the equipment and facilities of AGL for research and training. AGL has the sole right to approve or disapprove the Member's use of such equipment and facilities in order to ensure that the goals and objectives of the Consortium's Research Program are best met. The Member may be charged for costs resulting from facilities usage that exceeds the amount established as reasonable by the Consortium. Additionally, a Member shall have the ability to enter into a Master Research Services Agreement for work and research to be conducted by AGL.

3.4 Research Consortium Advisory Board

The Advisory Board of AGL will consist of a selection of representatives drawn from Members of the Consortium, supplemented by other non-voting technical experts (selected by the Advisory Board) as necessary. The Advisory Board will determine technical strategies and research topics to accomplish purposes consistent with the Consortium's goals. The Advisory Board will meet at times and places that it will determine. Member representatives on the Advisory Board serve at the pleasure of the Member and may be replaced at any time. The Advisory Board will, by majority vote, elect a Chairperson and, if it chooses, establish an organizational structure.

3.5 Membership Meetings

AGL will host a minimum of one yearly meeting of its entire membership at which time developments, prototypes, and research topics will be reviewed and discussed. Both a printed and digital copy of progress will be provided to Consortium members. Members will be given six weeks' notice of the meeting. Travel to the meetings and other related expenses such as hotel, meals, etc. will be at the expense of each Member company.

3.6 Technical Reviews

AGL may, if requested, hold technical reviews for Members at their request and at the Member's site if the review has no impact on the Consortium's Research Program. AGL travel and related expenses will be borne by the Member requesting the review.

3.7 Publications

Results of research conducted by AGL under this Agreement will be made available to Members at least three (3) months prior to release or disclosure to non-members. Due to extensive lead times required by professional journals and conferences, AGL reserves the right to submit papers for publication or presentation prior to the end of this period. Since AGL recognizes the value of the research undertaken, it agrees that it will, at least thirty (30) days prior to publication, provide to Members abstracts of all manuscripts pertaining to the Consortium's Research Program. Any M.S. and Ph.D. theses that are a result of work done in this Consortium will be available to the general public upon completion.

3.8 Graduate Students

Via meetings and collaborations, AGL assists Members in becoming acquainted with graduate students, who as part of their education and training, are involved in research at UH/AGL. Members may consider such students as possible candidates for future employment, at the sole discretion of any Member.

4. CONFIDENTIALITY

Confidential Information means all information which is proprietary to the Consortium or to any Member, regardless of its nature or the manner in which each Member protects it, including, but not limited to, patentable technology (prior to the issuance of patents), trade secrets and know-how, or which is covered by a confidential disclosure agreement. Any confidential disclosure agreement must have the approval of the UH Office of Intellectual Property Management. Except for information excluded below, the Members agree to use best efforts to hold in confidence for a period of three (3) years all Confidential Information.

Each Member of AGL shall take all reasonable measures necessary to prevent the use of the Research Results and Technologies developed during the term of this Agreement (including any extensions) and for a period of three (3) years thereafter for any purpose other than the performance of their obligations or the exercise of their rights under this Agreement except (1) as authorized by mutual agreement between the Members as may be necessary in collaboration with (a) UH/AGL contracts and subcontracts, (b) licenses to Members or third-parties, and/or (c) reviews of the progress of the research. Further, nothing herein shall prevent AGL from publishing the results of research, which is partially or wholly funded at public expense or conducted with the use of public facilities, or is required to be made public to maintain a party's Not-For-Profit (501C) Status. AGL shall furnish Members with a copy of any proposed publications thirty (30) days in advance of the proposed submission. The Consortium may request AGL to delay such submission for a maximum of an additional sixty (60) days in order to protect the potential patentability of any invention described therein. Such delay shall not, however, be imposed on the filing of any student thesis or dissertation.

Nothing herein shall prevent AGL or Members from using, disclosing or authorizing the disclosure of any Information which (a) is in the public domain by reason of acts not attributable to the Member or AGL desiring to use, disclose or authorized the disclosure of such information; or (b) is already known to the Member or AGL; or (c) is received by a Member from a third-party without similar restriction and without breach of any obligation owed to any Member; or (d) is independently developed without similar restriction and without breach of any

obligation owed to any other Member; or (e) is furnished to a third-party without similar restrictions on the third-party's rights and without breach of any duty under this Agreement; or (f) is legally required to be disclosed to any governmental agency, at which time all Members will be notified.

Should a Member decide to deliver its own data to UH in order to examine them with AGL methodologies, UH shall have the right to disclose the results of such examinations, unless otherwise agreed.

5. DISCLAIMER OF WARRANTIES and LIMITATION OF LIABILITY

NO PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER NOT SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO CONFIDENTIAL INFORMATION, INVENTIONS, TECHNOLOGY, MASK WORKS, SOFTWARE, TECHNICAL DATA, OR THAT THE USE OF ANY OF THE FOREGOING WILL NOT INFRINGE ANY PATENT, COPYRIGHT, MASK WORK OR OTHER PROPRIETARY RIGHT. NO PARTY SHALL BE HELD TO ANY LIABILITY WITH RESPECT TO ANY CLAIM ARISING FROM OR ON ACCOUNT OF A MEMBER'S USE OF ANY OF THE FOREGOING REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, EXCLUDING GROSS NEGLIGENCE AND WILLFUL MISCONDUCT. TO THE EXTENT THAT A PARTY GRANTS A SUB-LICENSE OR OTHERWISE TRANSFERS ANY TECHNOLOGY, INVENTION, SOFTWARE, MASK WORK OR TECHNICAL DATA, THAT PARTY THEREBY INDEMNIFIES AND HOLDS HARMLESS THE OTHER PARTIES WITH RESPECT TO ANY CLAIM ARISING OUT OF THE SUB-LICENSE OR TRANSFER. IN NO EVENT WILL ANY PARTY BE LIABLE TO ANOTHER PARTY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY NATURE WHATSOEVER.

INSOFAR AS ANY CONFIDENTIAL INFORMATION, INVENTION, MASK WORKS OR TECHNICAL DATA COVERED BY THIS AGREEMENT SHALL HAVE ORIGINATED, IN WHOLE OR IN PART, FROM A MEMBER OR OTHER ORGANIZATIONS SIMILARLY AFFILIATED AS MEMBER, THEIR STAFF, FACULTY, STUDENTS, EMPLOYEES AND USED, SUB-LICENSED OR TRANSFERRED BY MEMBER, THE PARTIES HEREBY AGREE THAT THIS DISCLAIMER AND LIMITATION OF LIABILITY SHALL EXTEND TO THE PARTICIPATING INSTITUTIONS AND OTHER ORGANIZATIONS SIMILARLY AFFILIATED AS MEMBERS.

For purposed of this Agreement, the following definitions shall apply:

“Gross Negligence” means reckless disregard for harmful, avoidable and reasonably foreseeable consequences.

“Willful Misconduct” means willful disregard for harmful, avoidable and reasonably foreseeable consequences.

6. GENERAL

6.1 Franchise Tax Certification

Member certifies that, to the best of its knowledge, upon the effective date of this Agreement, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of such taxes. Member agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and AGL shall be entitled to terminate this agreement upon written notice thereof to member.

6.2 Government Rights

Notwithstanding any other provision in this Agreement to the contrary, this Agreement and any License or other right granted or to be granted pursuant hereto are subject to the rights of the United States or of the State of Texas under applicable statutes or regulations, and such rights shall survive unaffected the granting of any rights or licenses under this Agreement.

6.3 Governing Language

In the event that a translation of this agreement is prepared and signed by the parties for the convenience of the sponsor, this English language version shall be the official version and shall govern if there is a conflict between the two.

6.4 Resolution of Disputes

Any dispute or controversy arising over the sections on Ownership, Royalty Rates, and Joint Ownership of this Agreement, and only such sections, and their construction, shall be conducted in Houston, Texas. Best efforts will be made to achieve a successful resolution; however, all mediation is considered non-binding until approved by the Attorney General of the State of Texas, or an appropriate designee.

6.5 Severability

Should a court of competent jurisdiction later consider any provision of the Agreement to be invalid, illegal, or unenforceable, it shall be considered severed from this Agreement. All other provisions, rights and obligations shall continue without regard to the severed provisions, provided that the remaining provisions of this Agreement are in accordance with the intention of the Parties.

6.6 Effect of Headings

The headings of the various sections and paragraphs of this Agreement are used solely for the convenience of the parties and do not form a part hereof and are not intended to affect the interpretation or meaning of this Agreement.

6.7 Compliance with Laws

All parties shall comply with all applicable laws and governmental rules and regulations of the United States and the State of Texas that directly affect such parties conduct in the performance of this agreement. This Agreement, any license or other right granted or to be granted thereunder shall be subject to revision to conform with any determination by the government of either the United States or the State of Texas under such laws, rules, or regulations, including, but not limited to, the granting of licenses, the duration of licenses, the amount of royalties thereunder, and the export of Technology beyond the borders of the United States. Members shall provide AGL with any information or report required to comply with any such determination, laws, rules, or regulations. Any inconsistency between this Agreement and the pertinent provisions of any such determination, law, rule, or regulation shall be resolved by conforming this Agreement to such determination, law, rule, or regulation.

6.8 Assignment

This Agreement shall not be assigned by the Member except as part of a sale of all or a portion of the Member's business and, in such event, only in its entirety and upon prior written notice to and approval from UH/AGL. Thereafter, the term Member, when used in this Agreement, shall mean the approved assignee of the Member.

6.9 Use of Names

Parties shall not use in any advertising, promotional, or sales literature the name (or any adaptation of the name) of the other party or any Member without their prior written consent.

6.10 Notices

Any notice other than routine correspondence that is required or permitted by this Agreement shall be by a nationally recognized overnight courier service, addressed as follows:

To AGL:
Dr. Robert R. Stewart, Director AGL
Department of Earth and Atmospheric Sciences
312 Science and Research Building 1
University of Houston
Houston, Texas 77204-5007

With a Copy to:
Office of Contracts and Grants
University of Houston
4800 Calhoun
316 E. Cullen Building
Houston, Texas 77204-2015

To MEMBER:

Any notice sent pursuant to this paragraph shall be deemed effective upon receipt or refusal by the addressee. Either party may change its address by notice sent in accordance with this paragraph.

6.11 Termination

The Consortium may be terminated at any time by mutual consent of the membership. In such event any rights accrued in property, copyrights or other intellectual property shall be disposed of as provided in Articles 2 and 3. Any excess fees will remain with the UH-AGL to be used at its sole discretion. Members may terminate their membership in writing, giving a thirty (30) day notice. No membership fees or portions thereof shall be returned.

6.12 Survival of Certain Obligations

The termination of this Agreement shall not relieve any Member of any obligation hereunder to maintain confidentiality, indemnify and hold harmless, keep records, make payment of any sums due, or to make payment of fees which accrued prior to the termination of this Agreement.

6.13 Applicable Law

The interpretation and applications of the provisions of the Agreement shall be governed by the laws of the State of Texas, provided that all questions concerning the construction or effect of patent applications and patents shall be decided in accordance with the laws of the country in which the particular patent applications or patent conceived has been filed or granted as the case may be.

This agreement is signed by UH and Member and reviewed and approved by the Allied Geophysical Lab to indicate acceptance of membership in the AGL Research Consortium.

Dated this _____ day of _____, _____.

University of Houston **MEMBER NAME**

Name: Name:

Title: **Director, Office of Contracts and Grants** Title: