

## Attachment A

### Naval Surface Technology and Innovation Consortium (NSTIC)

#### Consortium Membership Agreement

##### PURPOSE

This Consortium Membership Agreement (“CMA”) establishes the Naval Surface Technology and Innovation Consortium (NSTIC) as of 25 June 2019.

**WHEREAS**, the Government has expressed an intent to collaborate with traditional and non-traditional defense contractors and academia, to leverage their combined capability in research, development and maturation of prototype projects and production in naval surface warfare technologies and capabilities that include but are not limited to Multi-function Materials; Cyber; Big Data Analytics, Artificial Intelligence, Machine Learning; Directed Energy Science and Engineering; Advanced Computing and Software Engineering; Autonomous and Unmanned Systems; Electromagnetic Environmental Effects and Spectrum; Sensor Systems; Gun and Projectile Systems; Digital Engineering; Human Systems Integration; Quantum Technologies; Threat Engineering; Mission Engineering and Analysis; Integrated Warfare Systems; Virtualization; Asymmetric Warfare; Manufacturing; Lethality; Surface Offensive and Defensive Engagements; Launcher Technology and other relevant subject, technology, and capability domains as may be required in order to fully support the needs of the U.S. Government,

**WHEREAS**, the Members are entering into the CMA in order to provide for (i) a consortium to conduct research, development, and prototyping of projects and programs through an Other Transaction Agreement or other agreements, (ii) their respective rights and obligations as a Member of the consortium, and (iii) administrative matters pertaining to the conduct of activities as Members of this consortium;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained in the CMA, the NSTIC Members agree as follows:

##### DEFINITIONS

HEREINAFTER the following definitions apply:

**Affiliate** means, with respect to a specified Member that is a signatory to the CMA, any corporation, company, partnership, joint venture and/or firm which now or hereafter controls, is controlled by or is under common control of such specified Member or shares a parent. For purposes of this definition, "control" shall mean (i) in the case of corporate entities, direct or indirect ownership of at least 50% of the stock or shares entitled to vote for the election of directors; and (ii) in the case of non-corporate entities, direct or indirect ownership of at least 50% of the equity interest with the power to direct the management and policies of such non-corporate entities.

**Consortium Manager (CM)** refers to the organization acting on behalf of the NSTIC (not as an agent of any individual Member) to negotiate, execute and administer the NSTIC's efforts under an OTA. The Consortium Manager's purpose is to perform the specific Consortium Management duties as specified in the OTA between the Government and NSTIC, as well as support the operations of NSTIC as guided by the NSTIC Executive Committee. The Consortium Manager will be prohibited from performing prototype research under the OTA.

**NAC** means the National Armaments Consortium formed by industry and academia, is comprised of traditional and non-traditional defense contractors, including small and large businesses, for profit and non-profit entities, and academic research institutions pursuant to the separate NAC Consortium Membership Agreement.

**NSTIC or Consortium** means the Naval Surface Technology and Innovation Consortium, which is made up of Consortium Members from industry, academia, and non-profit organizations pursuant to this CMA.

**Material Change** means any change to the terms or conditions of this Agreement that affects the obligations of the parties. To be material, the change must affect a part of the Agreement and the rights of the parties to it.

**Member or Members** means respectively an individual NSTIC Member organization or the NSTIC Member organizations collectively that are signatories to the NSTIC Consortium Membership Agreement or as otherwise defined Membership clause of this CMA.

**Other Transaction Agreement or OTA** means the agreement, which is entered into by the Government and the Consortium Manager on behalf of the NSTIC.

**Base Agreement** means the agreement between the Consortium Manager and the Member organization, which serves as the baseline agreement for all future Project Agreements. The Base Agreement flows down applicable terms and conditions from the OTA between the Government and the NSTIC.

**Project Agreements** refer to agreements issued by the Consortium Manager, under the terms of the Base Agreement, for a specific project.

## **ARTICLE 1: CONSORTIUM MEMBERSHIP**

**Membership.** The NSTIC will be open to and include Members from industry, academic research institutions, and non-profit organizations. The Members hereby adopt a non-exclusive, open Membership policy. The Members will include additional Members in accordance with the provisions contained in the NSTIC Consortium Membership Agreement. Any Member, regardless of when they join the NSTIC, shall enjoy the same rights and incur the same obligations as any other Member hereunder. Membership in the NSTIC will become effective upon approval of the Membership application. Furthermore, Members of the National Armaments Consortium (NAC) are pre-approved as NSTIC Members once a completed application is submitted.

**Membership Dues.** There are no annual membership dues; however the NSTIC Executive Committee will evaluate the need for membership dues on a periodic basis and may institute dues by NSTIC Executive Committee Resolution.

**Project Award Assessment.** Each NSTIC Member receiving a Project Agreement under an OTA executed between the Government and the NSTIC is subject to a project award assessment. This project award assessment shall be established by the NSTIC Executive Committee and shall not exceed one percent (1%) of the authorized funded agreement value. The NSTIC Executive Committee will evaluate this assessment percentage on a periodic basis and may adjust it upward or downward by NSTIC Executive Committee Resolution.

### **Obligations to be a Member in Good Standing.**

- a) Current (no greater than 90 days past due) on any project award assessment
- b) Not more than 180 days late on Final Report submissions.

Only Members in good standing will be permitted to respond to solicitations for project awards.

The Consortium Executive Director may grant an exception to the criteria listed in paragraphs a) through b) above on a case-by-case basis with prior notification to the NSTIC Executive Committee.

**Membership Obligations.** The Parties agree that Membership has the following obligations:

- a) Unless directed otherwise by the Government, be a U.S. firm or institution organized or existing under the laws of the United States, its territories, or possessions. For the purposes of this CMA, any agency or instrumentality of a foreign government shall not be granted Membership;
- b) Not be barred from contracting with or receiving funds from the United States Government;
- c) Clearly demonstrate in their Membership application that they are capable of making a technical contribution in the NSTIC areas listed in the PURPOSE section above, and other relevant subject, technology, and capability domains as may be required in order to fully support the needs of the U.S. Government;

- d) Contribute their respective talents and resources to the NSTIC for activities such as periodic meeting attendance, committee and subcommittee participation, and other activities as may be appropriate;
- e) Maintain an active Military Critical Technical Data Agreement (Form DD 2345) certification with the U.S./ Canada Joint Certification Office, Defense Logistics Information Service, Federal Center, 74 Washington Ave., North Battle Creek, MI USA 49037-3084;
- f) Not transfer Membership to any third party;
- g) Provide all cost and technical data as required in any NSTIC solicitation to which it responds; and
- h) Abide by the terms of this CMA and the Base Agreement.

## **ARTICLE 2: CONSORTIUM GOVERNANCE**

**NSTIC Executive Committee.** The affairs of the NSTIC shall be guided by a five (5) person NSTIC Executive Committee. Upon Consortium Formation, the NAC Executive Committee may appoint three (3) NAC and NSTIC Member organization representatives to the NSTIC Executive Committee and two (2) additional NSTIC member representatives shall be appointed by the CM, in consultation with the NSTIC Executive Director, from NSTIC Member organizations. Executive Committee Members will each serve for a term of three (3) years. The NSTIC Executive Committee shall be comprised of two (2) representatives from NSTIC Member organizations classified as large businesses or non-profits, two (2) representatives from NSTIC Member organizations classified as small businesses, and one (1) NSTIC Member organization representative from academia. The NSTIC Executive Committee shall include a Chair and a Treasurer, to be selected by the NSTIC Executive Committee shortly after initial formation. Any person serving on the NSTIC Executive Committee may be relieved of his/her position at any time for cause or for no cause by a two-thirds (2/3) vote of the NSTIC Executive Committee members. Unless stated otherwise in the CMA, decisions of the NSTIC Executive Committee shall require a majority vote of the committee. The Executive Committee shall use Resolutions to effect changes in policies, procedures, and operations provided such Resolutions do not constitute a Material Change to this Agreement.

The NSTIC Executive Committee does not have access to Member's proprietary data, are not provided advance insight of potential government solicitations, and do not have insight regarding source selection decisions made by the government.

**Election of the NSTIC Executive Committee.** Elections to replace the NSTIC Executive Committee representatives whose terms are expiring, or if a position becomes vacant, will be conducted electronically. The CM shall preside over elections. The CM will solicit nominations for the NSTIC Executive Committee sixty (60) days prior to each election cycle, citing incumbent NSTIC Executive Committee representatives whose terms are expiring and any special organizational requirements for nominees. Incumbent NSTIC Executive Committee representatives may be nominated and re-elected to successive terms, provided the organizational status of the organization they represent remains unchanged. Any Member may nominate an individual to the NSTIC Executive Committee. All nominees must be employed by a "Member in Good Standing" organization as defined in this CMA. The NSTIC Executive Committee will review all nominee applications to determine if the nominees meet nomination requirements. If during their term, a NSTIC Executive Committee Member is no longer willing or able to serve on the Executive Committee, or if a NSTIC Executive Committee Member's organization withdraws from the Consortium the vacated position will remain unfilled until the next general election cycle. Upon completion of the election process, the new NSTIC Executive Committee Member will serve for the remainder of the term for the vacancy they are filling.

**Voting Procedure.** The voting shall be by electronic ballot, by one authorized representative from each "Member in Good Standing." Tabulation of ballots will be conducted by the CM immediately following the close of balloting. The nominees in each category with the highest number of votes shall be elected to serve on the NSTIC Executive Committee. The period for conducting elections should not exceed 30 days.

**NSTIC Executive Committee Chair or Chair.** The NSTIC Executive Committee Chair shall preside over all meetings of the NSTIC Executive Committee, performing all duties customary to that office and overseeing the affairs of the NSTIC Executive Committee in accordance with policies and directives approved by the NSTIC Executive Committee. The Chair shall not serve more than two successive terms.

**Treasurer.** The Treasurer shall act under the direction of the Chair as the financial representative responsible for making financial decisions and reviewing and approving all vouchers presented by the Consortium Manager for payment. The Treasurer shall approve disbursement of NSTIC funds by the Consortium Manager, and shall render to the Chair and the Executive Committee, at its regular meetings, or when the NSTIC Executive Committee so requires, an account of the Consortium Manager's transactions and of the financial condition of the NSTIC.

**Subcommittees.** The NSTIC Executive Committee shall have the authority to form subcommittees comprised of representatives from Member organizations to advise the NSTIC and if applicable the Government on topics of special interest to the Members.

**Consortium Manager.** Advanced Technology International is the Consortium Manager that will administer the affairs of the Consortium under the direction of the NSTIC Executive Committee. The Consortium Manager is prohibited from participating in technical project work of the NSTIC.

The Consortium Manager shall:

- Act as the point of contact for the Consortium;
- Lead the Consortium Executive Committee in negotiating with the Government on issues involving the OTA;
- Have signature authority on behalf of the Consortium;
- Provide "single point contracting" functions as needed to execute the OTA;
- Use its best efforts to guard against the disclosure of competitively sensitive information and, together with the Executive Committee, institute antitrust compliance policies and procedures for the Consortium;
- Together with the Executive Committee, take appropriate steps to avoid organizational conflicts of interest among the Members and to mitigate such conflicts if they cannot be avoided;
- Be responsible for the daily management of the Consortium;
- Provide the NSTIC Executive Director position;
- File with the U.S. Attorney General and the Federal Trade Commission changes in Membership in accordance with the provisions of the National Cooperative Research Act of 1993 within 90 days of approval of the CMA;
- Manage the finances of the Consortium to include invoicing, collecting, and tracking projects assessments from Member Companies.

**NSTIC Executive Director.** The NSTIC Executive Director shall serve on the NSTIC Executive Committee as a non-voting, ex officio representative. The NSTIC Executive Director oversees consortium operations as guided by the policies, procedures, and strategic direction set by the Executive Committee and will serve as the single point of contact to the membership, the Government or their respective designees. The Consortium Manager will provide the NSTIC Executive Director.

### **ARTICLE 3: CONSORTIUM FINANCES**

**Management of Consortium Funds.** The Consortium shall operate on the funds collected through project award assessments. Such funds will be deposited in an account that shall be administered by the CM under the direction of the NSTIC Executive Committee.

**Budget Approval Process.** Annually, the CM shall prepare and submit a Consortium Operations budget for the

upcoming year to the NSTIC Executive Committee for review and approval. The annual Consortium Operations budget shall include a Statement of Work (SOW) and the total amount of estimated funding needed to complete the SOW, which will be reviewed and approved by the NSTIC Executive Committee. The NSTIC Executive Committee must approve any changes to the SOW and budget. The CM shall not be obligated to perform SOW tasks if the Consortium has insufficient funding.

**Payment.** The NSTIC shall pay the CM as compensation for the performance of the services based on the approved budget. Payments shall be made by the Consortium to the CM monthly upon Treasurer's approval of invoices.

#### **ARTICLE 4: TERM AND DISSOLUTION**

**Term.** Members may terminate their membership at any time by written notice to NSTIC; and in its sole discretion, NSTIC may terminate a Member's participation in the Consortium by written notice to a Member should such Member fail to comply with the Member obligations set out in this CMA. In the event of the termination, Member's rights and obligations pursuant to any Project Agreements, including but not limited to, continued funding and technology contribution commitments shall continue in accordance with the specific terms of the Project Agreements. Further, financial obligations to the consortium, to include project assessments, shall remain in full force and effect until all outstanding obligations to the consortium are satisfied according to the CMA.

**Dissolution.** The NSTIC may be dissolved by a two-thirds (2/3) vote of the NSTIC Executive Committee. Upon dissolution or other termination of the NSTIC, all remaining assets of the NSTIC, after payment in full of all its debts, obligations, and necessary final expenses, or after the making of adequate provision thereof, shall be distributed to such tax-exempt organizations (with purposes similar to those of the NSTIC) as shall be chosen by the then existing Executive Committee of the Consortium. In the event the then existing Executive Committee of the Consortium cannot achieve a two-thirds (2/3) vote on the tax-exempt organization(s), the funds shall be distributed to the U.S. Treasury.

#### **ARTICLE 5: INDEPENDENT CONTRACTOR STATUS**

The relationship of the Members established by the CMA is that of independent contractors. Nothing contained in the CMA shall be construed to (i) give any of the Members hereto the power to direct or control the day-to-day activities of another Member hereto, (ii) constitute the Members as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow any of the Members hereto to create, discharge or assume any obligation on behalf of another Member hereto for any purpose whatsoever. Each Member retains the right to engage independent research and activities that may compete with, or be contrary to, the goals of the NSTIC.

#### **ARTICLE 6: INTELLECTUAL PROPERTY/ PROPRIETARY DATA**

Intellectual Property Rights between Members and the Government will be governed by the terms and conditions of Base Agreement and individual Project Agreements. The Consortium, its Members, and the CM will not receive any rights to Member's Intellectual Property under this CMA.

Member organizations may be required to provide proprietary data to the CM in order for the CM to successfully satisfy its obligations under this agreement and the OTA. Accordingly, a Proprietary Information Exchange and Nondisclosure Agreement is incorporated herein as Exhibit A. This agreement will govern the exchange and use of proprietary data between Members and the CM. This Exhibit is not applicable to individual consortium Members who decide to share proprietary information with each other unless they expressly agree to use these terms for that purpose.

#### **ARTICLE 7: GENERAL PROVISIONS**

**Amendments.** No amendment or modification of the CMA shall be valid unless agreed to in writing by two-thirds (2/3) vote of the NSTIC Executive Committee Membership. The NSTIC Executive Committee may, at its discretion, refer certain proposed amendments to the full NSTIC Membership for validation by a majority vote of the Membership.

**Compliance with U. S. Export Laws.** The Members shall comply with all applicable export control laws and regulations of the United States, including the Arms Export Control Act (“AECA”), the International Traffic in Arms Regulations (“ITAR”), the Export Administration Regulations (“EAR”), and other U.S. government directives related to export control.

**Compliance with Antitrust Laws.** The Members shall comply with all applicable U.S. antitrust laws.

**Governing Law.** This Agreement shall be governed by the laws of the State of New York, to the extent it does not conflict with the public academic research institution’s state law, without giving effect to its choice of law principles. In order to bring forth a dispute under this Agreement, the Party must first provide formal notification to the NSTIC Executive Committee of the cause for the dispute. At which time, the NSTIC Executive Committee and the Party will have 30 days to resolve the dispute until any further action is taken by either party.

#### **EXHIBIT A: PROPRIETARY INFORMATION EXCHANGE AND NONDISCLOSURE AGREEMENT**

This Exhibit A is an agreement between the Consortium Manager (CM), and individual Consortium Members for the exchange of proprietary information in order to carry out the duties and obligations contemplated under this CMA and the OTA. Membership in the NSTIC Consortium constitutes agreement to be bound by the terms and conditions contained in this Exhibit. This agreement, unless superseded by a separately executed nondisclosure agreement between the parties, is applicable to the CM and individual Consortium Members in order for the CM to satisfy its obligations under the CMA and the OTA. This Exhibit is not applicable to individual Consortium Members who decide to share proprietary information with each other unless they expressly agree to use these terms for that purpose.

1. To the extent that information related to the Other Transaction Agreement is transmitted by a disclosing party to Recipient during the term of this agreement, it is agreed that, if the disclosing party deems it proprietary, the disclosing party shall set forth such information in writing and identify it by so marking such information with an appropriate legend, marking, stamp, or positive written identification on the face thereof to be proprietary to the disclosing party.
2. When disclosed orally, Proprietary Information will be identified as Proprietary Information at the time of the oral disclosure. Within thirty (30) days of disclosure, the disclosing party will confirm the disclosure in writing to the Recipient referencing the date of disclosure and specifically identifying the Proprietary Information disclosed. A disclosing party shall clearly and conspicuously mark as proprietary all Proprietary Information reduced to writing as a result of such oral disclosures.
3. When disclosed in the form of magnetic recording or some other machine-readable form, Proprietary Information will be identified as Proprietary Information when transmitted. If possible, the container or form of the information will be clearly and conspicuously marked by the disclosing party as proprietary. Within thirty (30) days after disclosure, the disclosing party will confirm the disclosure in writing, referencing the date of disclosure and specifically identifying the Proprietary Information disclosed. Any physical embodiment of such information will be clearly and conspicuously marked as proprietary of the disclosing party.
4. Recipient agrees to preserve and protect all Proprietary Information from disclosures to others through the exercise of at least the same level of care it uses to preserve and protect its own Proprietary Information. Proprietary Information shall not be used, copied, or reproduced by the Recipient without the express written consent of the disclosing party. Recipient may disclose such Proprietary Information to the United States Government only in connection with work under an Other Transaction Agreement with a Government Agency and the disclosing party is a participant in the program involved with the Other Transaction Agreement and any such Proprietary Information delivered to the Government is appropriately marked in accordance with the terms of the Other Transaction Agreement which it is delivered.
5. Recipient shall not be liable for disclosure or use of any such Proprietary Information if the same:

- a. is in the public domain, or
  - b. was known to the Recipient at the time of disclosure, or
  - c. is disclosed inadvertently despite the exercise of the same degree of care as Recipient takes to preserve and safeguard its own Proprietary Information, or
  - d. is disclosed with prior written approval of the disclosing party, or
  - e. was independently developed by the Recipient, or
  - f. is disclosed to the Recipient by a third party without breaching of this agreement, or
  - g. is disclosed or used, in any event, after the expiration of three (3) years from the date Proprietary Information is received, or
  - h. Obligated to be produced by order of a court of competent jurisdiction.
6. All documents or other materials delivered hereunder which are marked as Proprietary and any copies thereof are, and shall remain the property of the disclosing party and shall promptly be returned or destroyed, at the disclosing party's option, upon expiration of this agreement or upon the disclosing party's written request. If the disclosing party requests, the Recipient shall issue a certificate of destruction. Recipient shall retain a copy of proprietary information to the extent required to comply with the government's audit provisions contained in the NSTIC Other Transaction Agreement.
  7. This Agreement shall expire ten (10) years from the last date of execution, unless extended by written agreement of the Parties. All such Proprietary Information disclosed to the Recipient or any of its employees, agents, or representatives shall be kept safe from disclosure, directly or indirectly, for a period of three (3) years from date of conveyance to Recipient.
  8. Neither the execution and delivery of this agreement nor the delivery of any Proprietary Data hereunder shall be construed as granting either expressly or by implication, estoppel or otherwise, any right in or license under any present or future data, drawings, plans, ideas or methods disclosed under this agreement, or under any invention or patent now or hereafter owned or controlled by the disclosing party furnishing the Proprietary Data.
  9. To the extent that the obligations of the Recipient hereunder involves access to information classified "Top Secret," "Secret," or "Confidential," the provisions of FAR 52.204-2 Alt 1, or corresponding regulations of the appropriate Government agency, as applicable, shall apply.
  10. Recipient as the receiver of information transmitted under this agreement acknowledges its obligations to control access to technical data under the U.S. Export Laws and Regulations and agrees to adhere to such Laws and Regulations with regard to and technical data received under this agreement.
  11. This agreement shall be governed by the laws of the State of New York, to the extent it does not conflict with the public academic research institution's state law, without giving effect to its choice of law principles.

This agreement contains the entire understanding relative to the disclosure and protection of Proprietary Data. No modification or addition to any provision hereof shall be binding unless it is in writing, and signed by Recipient. This agreement shall apply in lieu of and notwithstanding any specific terms contained in any legend or statement associated with any particular Proprietary Data exchanges, and the duties of Recipient shall be determined exclusively by the terms and conditions herein.