

**UNDERSEA TECHNOLOGY INNOVATION CONSORTIUM (UTIC) BASE AGREEMENT**

**BETWEEN**

**ADVANCED TECHNOLOGY INTERNATIONAL (ATI)  
315 SIGMA DRIVE  
SUMMERVILLE, SC 29486**

**AND**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**UNDERSEA TECHNOLOGY INNOVATION CONSORTIUM BASE AGREEMENT NO.: 20XX-XX**

**Authority: UTIC Other Transaction Agreement (OTA) No. N66604-18-9-0001 and 10 U.S.C. § 2371b.**

This Agreement is entered into between the Advanced Technology International (ATI), hereinafter referred to as the "Consortium Manager" or the "CM," and \_\_\_\_\_, hereinafter referred to as "Consortium Member". This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and agreements. It shall not be varied except by an instrument in writing of subsequent date duly executed by an authorized representative of each of the parties. The validity, construction, scope and performance of this Agreement shall be governed by the laws of the state of South Carolina, excluding its choice of laws rules.

**Consortium Member Name**

**Advanced Technology International**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

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**1. Parties**

The parties to this Agreement are the Consortium Member identified on the cover page and the UTIC Consortium Manager (CM), Advanced Technology International.

**2. Severability**

In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, unless applying such remaining portions would frustrate the purpose of this Agreement.

**3. Order of Precedence**

The order of precedence is as follows:

- 1. This Agreement
- 2. Any attachments to this Agreement
- 3. Project Agreements executed under this Agreement
- 4. Any attachments to Project Agreements executed under this Agreement

**4. Scope**

The Government will only issue prototype projects determined to be within the scope of the Technical Areas of this Agreement. Prototype Projects awarded under this Agreement will also comply with all the requirement of 10 U.S.C. § 2371b. Prototype Projects awarded under this Agreement are subject to the terms and conditions of this Agreement.

**5. Agreement Administration**

Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

UTIC CM:	Advanced Technology International Mandi Ballou Sr. Contracts Manager 315 Sigma Drive Summerville, SC 29486 utic.contracts@ati.org
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Consortium Member:	_____
	_____
	_____
	_____
	_____

Either party may change its representatives named in this Article by written notification to the other party.

**6. Definitions**

"Agreement" or "Base Agreement" means the Base Agreement between the Undersea Technology Innovation Consortium (UTIC) Consortium Manager (CM), Advanced Technology International (ATI), and the Consortium Member.

"Agreements Officer (AO)" means an individual with authority to enter into, administer, or terminate

the UTIC OTA and to instruct the CM to enter into, administer, or terminate any Project Agreements executed under this Agreement.

"Agreements Officer's Representative (AOR)" means an individual designated and authorized in writing by the Agreements Officer to perform specific technical or administrative functions on behalf of the Government. At the Government's discretion, multiple AORs may be designated in writing at either the OTA or Project Agreement level.

"Cost Sharing" means cash or in-kind resources expended during a prototype award by the Consortium Member or lower tier subcontractors that are necessary and reasonable for accomplishment of the project.

"Computer software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provides instructions for using the software.

"Covered Government support contractor" means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor:

1. Is not affiliated with the prime contractor or a on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
2. Receives access to technical data or computer software for performance of a Government contract that contains the clause at Department of Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

"Consortium" means the legal entity that is a party to the Other Transaction Agreement No. N66604-18-9-0001 that is composed of traditional and non-traditional contractors, as well as academia and non-profits, that is legally bound to operate in accordance with a Consortium Membership Agreement.

"Consortium Manager (CM)" is the organization acting on behalf of the UTIC Consortium to execute and administer the efforts under this Other Transaction Agreement. The CM is prohibited from performing prototype projects under this Other Transaction Agreement.

"Consortium Member" means the traditional and non-traditional contractors, as well as academia and non-profits, that make up the membership of the Consortium.

"Consortium Membership Agreement (CMA)" means the agreement governing the rights and obligations of the Consortium member entities.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works.

The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions.

"Form, fit and function data" means data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government" means the United States of America, as represented by an Agreements Officer.

"Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or authorize others to do so.

Within a specific, agreed-upon timeframe "Government Purpose Rights" ("GPR") may evolve into "Unlimited Rights" (as defined later in this section). GPR means the rights to:

1. Use, modify, reproduce, release, perform, display, or disclose Data within the Government without restriction; and
2. Release or disclose Data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Data for United States government purposes.

"Invention," as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code (U.S.C.).

"Limited Rights" means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if:

1. The reproduction, release, disclosure, or use is:
  - a. Necessary for emergency repair and overhaul; or
  - b. A release or disclosure to:
    - i. A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or
    - ii. A foreign government, of Data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes.
2. The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and
3. The Consortium Member, or subagreement holder asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Made," as used in this Agreement in relation to any Invention, means the conception or first actual reduction to practice of such Invention.

"Non-traditional Defense Contractor" means, per 10 U.S.C. § 2302(9), "an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. § 1502 and the regulations implementing such section."

"Other Transaction Agreement (OTA)" means the Other Transaction Agreement between the Government and the Undersea Technology Innovation Consortium by its Consortium Manager, Advanced Technology International, Agreement No. N66604-18-9-0001.

"Project Agreement" means any individual OT prototype project awarded to Consortium Members.

"Prototype" means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

"Prototype Project" means a research activity proposed by the prototype-level performer and selected by the Government for a Project Agreement under this Agreement.

"Practical application" as used in this Agreement, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the Invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Government on reasonable terms.

"Subagreement" means any agreement or contract executed between a Consortium Member and another entity in performance of a Project Agreement.

"Subject Invention" means those inventions conceived or first actually reduced to practice under this Agreement.

"System for Award Management (SAM)" means the Federal repository into which an entity must provide information required for the conduct of business as a Consortium. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).

"Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to agreement administration, such as financial and/or management information.

"The Parties" means the CM and the Consortium Member where collectively identified and "Party" where each entity is individually identified, unless otherwise noted in a specific Article or Section of this Agreement.

"Unlimited rights," means rights to use, modify, reproduce, perform, display, release, or disclose Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so, for an unlimited time. As defined above, "Unlimited Rights" may evolve from "GPR" after a specified, agreed-upon date, however, "Unlimited Rights" may also be directly conferred by agreement.



## **7. Agreement Duration**

The Period of Performance for this Agreement is from the effective date, which is the date of last signature through May 31, 2021. Any Project Agreement issued during the Period of Performance for this Agreement and not completed within that period shall be completed by the Consortium Member within the time specified in the Project Agreement.

## **8. Consortium Administration**

The Government and the Consortium, through the CM, are bound to each other by a duty of good faith and best effort to achieve the objectives of this Other Transaction Agreement. This Other Transaction Agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

All financial transactions between the Government and the Consortium, including payment, will be made via the CM.

The CM shall accomplish the overall management, including reporting, financial and administrative matters, of the coordinated prototype program established under this Other Transaction Agreement. The CM shall be responsible for the overall day-to-day management of Government selected projects and all prototype projects issued to the Consortium under this Other Transaction Agreement. The CM shall also be responsible for resolving performance issues that occur during performance of this Other Transaction Agreement.

## **9. Appropriate Use of Other Transaction Authority**

This Agreement is executed in accordance with the authority provided in 10 U.S.C. § 2371b. All Project Agreements executed under this Agreement must comply with § 2317b, including, that they must be directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or the improvement of platforms, systems, components, or materials in use by the armed forces. Each project agreement must also be supported by a determination and findings as required by § 2371b.

Follow-on production efforts may be executed under this Other Transaction Agreement in accordance with 10 U.S.C. § 2371b.

Throughout the period of performance of any Project Agreement, the Agreements Officer, CM, and AOR will actively monitor all projects to ensure compliance with this statutory requirement. Any Consortium Member whose Project Agreement is found to be non-compliant with the statute must become compliant. Failure to comply may result in termination of the Project Agreement and removal from consideration for future Project Agreements.

## **10. Prototype Technology Areas**

Technology Areas covered under this Agreement are as follows:

- **Sensors and Sonar** - Sensors: Technology that detects and responds to some input from the physical environment that could include light, heat, motion, moisture, radiation, pressure, or any one of a great number of other environmental phenomena. The output is generally a signal that is converted to human-readable display or control at the sensor location or transmitted electronically over a network for reading or further processing. Sonar: Technology employing sound waves to detect and locate objects, especially submerged in water, using echolocation/reflection.

- **Platform & Payload Integration** - Identify, explore, and apply new technologies, methods and techniques in the fields of systems engineering, design engineering, software engineering, logistics engineering, and test and evaluation to integrate new and existing systems into ships, submarines and other maritime platforms. The other platforms may include unmanned and remotely operated vehicles, as they become smaller and operate in new ways such as swarming, self-learning and autonomous modes.
- **Undersea Warfare (USW) Combat Systems** - Technology that pertains to integrated undersea weapons system that typically combine combat management, command and control/decision systems and fire/weapon control systems that include advanced computer and radar technology to locate, track, identify and guide weapons to destroy enemy targets.
- **Communications** - Technology pertaining to transmitting and receiving information and data among intended parties.
- **USW Imaging** - Identify, explore, and apply new technologies, methods, techniques and concepts for capturing, storing, manipulating and presenting images of the undersea and maritime environment, including geographical characteristics, vehicles, targets, structures, or similar surface images which could be useful to an undersea warfare decision maker.
- **Undersea Distributed Networked Systems** - Development and prototyping of products, hardware, and software/open systems that create an "undersea or maritime internet of things and sensors," that can be connected to and work with any warfighting domain (air, surface, undersea, cyber, spectrum), or public-sector domain. Technology allows multiple systems to operate over a distributed network, typically with shared communications and distributed processing.
- **Electronics/Optics/Materials** - Electronics: The electronic devices, circuits or systems developed through electronics that can be utilized in the undersea and maritime environment. Optics: technology behind the genesis, propagation, sight and behavior of electromagnetic light, and the changes it undergoes and produces; includes the properties of transmission and deflection of other forms of radiation. Materials: Substance(s) or matter from which things are made or composed for the undersea and maritime environment.
- **Passive Sensing** - Technology that pertains to detecting and responding to some type of input from the physical environment through detecting and gathering of target data from vibrations, light, radiation, heat, or other phenomena in the subject's environment (versus active sensors which include transmitters that send out a signal, a light wavelength or electrons to be bounced off the target, with data gathered by the sensor upon their reflection.)
- **Undersea Satellites** - Technology to enable the use of state-of-the-art satellite capabilities (today used for communication, networking, data distribution, weather, intelligence, control and command functions, etc., for military and civilian use) for undersea functions and applications.
- **Energy Storage and Release** - Development and prototyping of hardware and software components and systems that collect, produce, and store energy and manage its distribution in a maritime or undersea environment. Generally, these technologies, products and

applications will guarantee availability of power – any time, any place, and in any quantity with sufficient power density and capacity, energy duration and cycle-life.

- **Virtualization** - Technology that enables the creation of a virtual resource that behaves/operates like the actual version of something. An emulation of the real system that performs a function just like the real system.
- **Machine Learning** - Development, demonstration, and exploitation of technologies, algorithms, and methods that expand the ability of a computer to learn from data, other computers, or sensors, without human intervention. Machine Learning computers can improve themselves from data, knowledge, experience and interaction with other computers. A computer with machine learning capabilities will use elements of statistics, knowledge science, computer science/systems, natural language processing, large database construction and management, and planning and control to improve its ability to suggest or predict outcomes of situations.
- **Threat Monitoring and Prediction** - Development and prototyping of products (hardware, software, systems) that can assist the maritime or undersea warfare commander in continuously assessing and analyzing threats, predicting threat levels, and identifying unexpected threats, as a function of sensor data, intelligence data, open source data, operational data, and human interactions.
- **Cooperative Force Torpedo Defense** - Technology enabling a shortened kill chain; adaptive systems and technologies to outpace the threat; and virtual environment for modeling and simulation and training.
- **Undersea Warfare Analysis** - Develop, demonstration and exploitation of technologies and prototypes to: (a) analyze future USW concepts based on current and emerging undersea warfare technological and operational direction; (b) develop and conduct analytical modeling and simulation of USW mission effectiveness; (c) analyze USW systems and their performance; (d) evaluate at-sea exercises through detailed reconstruction; and (e) evaluate intelligence information for implications in USW research and development.
- **Multi-Domain Fusion** - Development of software prototypes, processes, and systems that provide maritime and undersea warfare decision makers with capabilities to evaluate and develop inferences from "Big Data." Big data are large amounts data from multiple sources (domains) which may seem ostensibly disconnected. The sources for this data for example could include and are not limited by -data from undersea, surface, and air sensors, data from intelligence, data from internal and external operating environments, data from simulation exercises, and data from real world exercises. Technology should be able to relate, blend and combine data from difference categories and sources that exhibit different behaviors and demands for processing and analysis techniques, addressing data in homogeneity and variable data sourcing.
- **Electronic Warfare** - Identify, explore, and apply new technologies, methods and techniques that use the electromagnetic spectrum to attack enemy capabilities, protect our capabilities, and enhance electronic warfare - signal intelligence - electronic intelligence - communications and cyber operations.

- **Distributed and Autonomous Sensors** - A network of sensors that operate without outside control or human interface, and are capable of working independently.
- **USW Weapons and Autonomous Vehicles** - Technology pertaining to weaponry that operates in or from the undersea environment. Also, a category of vehicles that operate without outside control or human interface, and are capable of operating independently.
- **Autonomy** - The technology enabling an operation to be performed independent of human interface and control.
- **Quantum Computing** - Development, demonstration, and exploitation of technologies that use the principles and laws of quantum physics and mechanics to process information.
- **Bio-Inspired Sensors** - Sensors inspired or based on biological structures or processes.
- **Environmental Sensing, Monitoring & Prediction** - Technology that enables continuous analysis, assessment, and review of environmental data collected from all sources. Includes the probability-based anticipation/speculation of a certain environmental state occurring, based on this data and analysis.
- **In-Situ Energy Sources** - The sources of energy that would be found and that exist naturally in the undersea and maritime environment, such as waves, tides, etc.
- **Multi-Dimensional Display** - Display technology that utilizes numerous dimensions for better depiction, visualization and knowledge transfer.

## 11. **Prototype Project Process**

At a minimum, on an annual basis, the Government will seek prototype projects by issuing requests for white papers to the Consortium detailing mission needs and prototype objectives. The Government may seek white papers on potential prototype projects more frequently than the annual cycle after notification to the Consortium.

Each request for white papers will include a description of the prototype project, the funding anticipated for the award, the timeframe and basis for selection, and the post-selection schedule.

The CM shall publicize the request for white papers to Consortium Members and other potential new members with relevant capabilities and technologies to the requested prototype projects. Publication shall be to the broadest audience practicable.

Specific instructions for responding to each request for prototype projects will be included in the request itself.

The Government will perform an evaluation of each submitted white paper, and request further proposals based on this evaluation. The Government will identify the basis for evaluation in each request.

The Government will request proposals, tailored to each individual prototype requirement, for each selected white paper. These proposals may be written, oral, or both, as specified in each individual request. The Government will then evaluate submitted proposals based on the identified parameters in the request. At minimum, the Government will evaluate the proposed technical approach and the proposed cost/price. Awards may be made for Project Agreements based on these evaluations. In no way does

selection of a white paper guarantee award of the related prototype project.

The Government reserves to the right to keep proposals for each prototype requirement for up to 36 months after submission of the proposal. These proposals may be funded at any time during the 36 month period after the Government has reconfirmed validity of the proposal.

## **12. Pricing Arrangement for Prototype Projects**

Prototype Agreements awarded under the Agreement will be awarded on a fixed price or cost reimbursement basis, depending on the nature of each specific Prototype Project.

## **13. Status Reporting**

Consortium members executing Project Agreements executed under this Agreement shall provide status reporting as specified in each Project Agreement. This status reporting will, at a minimum, require a monthly status report and, upon completion of the project, a final report that provides a recap of the program that may be used for public release purposes.

The Consortium Member awarded a Project Agreement shall prepare and submit the following Reports to the CM for each Project Agreement they have been awarded.

## **14. Reporting to FPDS**

Prototype projects awarded under this Agreement will be reported by the Government to the Federal Procurement Data System-Next Generation (FPDS-NG), located at <https://www.fpds.gov>.

## **15. Agreements Officer's Representative**

The Government will designate an AOR for each Prototype Project awarded under this Agreement. The designation will be included in each Prototype Project, and will include the extent of the AOR's authority to act on behalf of the Agreements Officer. The AOR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the Agreement or subsequent Project Agreement.

## **16. Industry Days and Reviews**

Twice a year, the Government will organize an Undersea and Maritime Innovation Technology Industry Day, a collaboration event designed to bring government, academia, and industry together around mission needs and potential solutions. The Undersea and Maritime Innovation Technology Industry Days will be advertised in Federal Business Opportunities and through the consortium website and other communication channels. The purpose of these Industry Days is to allow the Government to share its mission needs, and consortium members to share their state-of-the-art technologies and technical solutions.

For each of the Undersea and Maritime Innovation Technology Industry Days, the Government will develop and share an Undersea and Maritime Innovation Technology Prototype Program Plan in advance that provides a draft schedule of upcoming prototype projects, including forecasted spending. The Government Program/Technical Manager will prepare the first Undersea and Maritime Innovation Technology Program Plan within 30 days of award of this Agreement, which will be presented at the first Undersea and Maritime Innovation Technology Industry Day.

Additionally, the Government and the Consortium will establish a schedule of biannual technical collaboration meetings, limited to Government and Consortium members who are engaged in active prototype projects to discuss the status, progress, and results of the prototype projects.

The CM shall also provide an annual review of the overall performance of all Project Agreements

executed under this Agreement. The review shall consist of a brief status report of the performance of each Project Agreement in that given year, as well as the aggregate performance under this Agreement, including a percentage of projects on schedule and within budget and those that have deviated from planned schedule and cost.

## **17. Patents**

Each Consortium Member awarded a Project Agreement agrees to be bound by the following rights and responsibilities with respect to any Subject Invention or Prototype which is the principal objective of a Project Agreement executed under this Agreement.

1. Allocation of Principal Rights
  - a. The responsible Consortium Member shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this clause and 35 U.S.C. § 202, provided the Consortium Member has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with the subparagraph 2 below) that the Consortium member does not intend to retain title.
  - b. The Consortium Member shall retain ownership throughout the world to background inventions. Any invention related to, conceived of, or first reduced to practice in support of a Consortium Member's internal development milestone shall be a background invention of Consortium Member and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first reduced to practice under this Agreement in support of other than internal development milestones shall be considered a Subject Invention.
  - c. The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.
2. Invention Disclosure, Election of Title, and Filing of Patent Application
  - a. The Consortium Member shall disclose each Subject Invention to the Agreements Officer through the CM on a DD Form 882 within eight (8) months after the inventor discloses it in writing to the Prototype Inventor's personnel responsible for patent matters.
  - b. If the Consortium Member determines that it does not intend to retain title to any Subject Invention, the Consortium Member shall notify the Agreements Officer, through the CM, in writing, within eight (8) months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to at least sixty (60) calendar days prior to the end of the statutory period.
3. Upon the Agreements Officer's written request, the Consortium Member shall convey title to any Subject Invention to the Government under any of the following conditions:
  - a. If the Consortium Member fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph 2 of this clause; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the Consortium Member to disclose or elect within the specified times.
  - b. In those countries in which the Consortium Member fails to file patent applications within the times specified in paragraph 2 of this clause; provided, that if the Consortium Member has filed a patent application in a country after the times specified in paragraph 2 of this clause, but prior to its receipt of the written request by the Government, the receipt of the written request by the Government, the Consortium Member shall continue to retain title in that country; or shall continue to retain title in that country; or



- c. In any country in which the Consortium Member decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.
4. Minimum Rights to the Consortium Member and Protection of the Consortium Member's Right to File
  - a. The Consortium Member shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Consortium Member fails to disclose the Subject Invention within the times specified in paragraph 2 of this clause. The Consortium Member's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Consortium Member is a party and includes the right to grant licenses of the same scope to the extent that the Consortium Member was legally obligated to do so at the time the Project Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.
  - b. The Consortium Member's domestic license, as described above, may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Consortium Member has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Consortium Member, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
  - c. Before revocation or modification of the license, the Agreements Officer shall furnish the Consortium Member a written notice of its intention to revoke or modify the license, and the Consortium Member shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.
5. Action to Protect the Government's Interest
  - a. The Consortium Member agrees to execute or to have executed and promptly deliver to the Agreements Officer all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Consortium Member elects to retain title, and (ii) convey title to the Government when requested under paragraph 3 of this clause and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
  - b. The Consortium Member agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Consortium Member each Subject Invention made under this Agreement in order that the Consortium Member can comply with the disclosure provisions of paragraph 2 of this clause. The Consortium Member shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
  - c. The Consortium Member shall notify the Agreements Officer, through the CM, of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of

- the response period required by the relevant patent office.
- d. The Consortium Member shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Agreement No. N66604-18-9-0001, awarded by the Naval Undersea Warfare Center. The Government has certain rights in the Invention."
6. The Consortium Member agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the Prototype Inventor, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Consortium Member, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Agreements Officer determines that:
    - a. Such action is necessary because the Consortium Member or assignee has not taken effective steps, consistent with the intent of this agreement, to achieve practical application of the Subject Invention;
    - b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Consortium Member, assignee, or their licensees; or
    - c. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Consortium Member, assignee, or licensees.
  7. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Agreement.
  8. Notice and Assistance
    - a. The Consortium Member shall report to the Agreements Officer, through the CM, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Consortium Member has knowledge.
    - b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Consortium Member shall furnish to the Government, when requested by the Agreements Officer, all evidence and information in the Consortium Member's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Consortium Member has agreed to indemnify the Government.
  9. The Consortium Member shall include this clause, suitably modified, to identify the parties, in all subagreements or lower tier agreements, regardless of tier, for experimental, developmental, or research work.
  10. The obligations of the Government and the Consortium Member under this clause shall survive after the expiration or termination of this Agreement.

## **18. Rights in Technical Data**

1. The Government shall have Government Purpose Rights (GPR) in Technical Data, Computer Software, and Computer Software Documentation developed under this Agreement, except as provided in paragraphs 2, 3, and 4, unless otherwise specified in Project Agreements.
2. The Government shall have Unlimited Rights in Data for the following:
  - a. Form, fit, and function Data;
  - b. Corrections or changes to Data furnished to the Consortium Member by the Government;
  - c. Data otherwise publicly available or have been released or disclosed by the Consortium Member, or subagreement holder without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale,



- transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
- d. Studies, analyses, test data, or similar data produced for this agreement, when the study, analysis, test, or similar work was specified as an element of performance, excluding Consortium Member's internal development milestones;
  - e. Data necessary for operation, maintenance, installation, or training; and
  - f. Computer software documentation required to be delivered under this Agreement.
3. The DFARS provision 252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions is incorporated into this Agreement by reference, with all mention of Offeror understood to mean the Consortium Member and all mention of Contracting Officer understood to mean Agreements Officer. Consortium Members are subject to this provision for each Project Agreement.
  4. Data or Computer Software that will be delivered, furnished, or otherwise provided to the Government under this Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless the parties have agreed otherwise in a Project Agreement, or any restrictions on the Governments rights to use, modify, reproduce, display or disclose the data have expired or no longer apply.
  5. The Consortium Member awarded a project, their subagreement holders, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose Data furnished to the Government with other than Unlimited Rights. However, if the Government desires to obtain additional rights in Data in which it has other than Unlimited Rights, the Consortium Member agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All Data in which the Consortium Member has granted the Government additional rights shall be listed or described in a license agreement made part of the agreement or a part of a Project Agreement. The license shall enumerate the additional rights granted the Government in such Data.
  6. Except for Data covered under paragraph 7, and Data delivered with unlimited rights, Data to be delivered under this Agreement subject to restrictions on use, duplication or disclosure shall be marked with the following legend:

"Agreement No.:

Consortium Member Name and Consortium Member Contact Info:

Information Expiration Date:

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph 3 of the Rights in Technical Data clause contained in the above identified agreement. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings."

7. Pre-existing Data markings: If the terms of a prior contract or license permitted the Consortium Member to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose Data deliverable under this agreement, and those restrictions are still applicable, the Consortium Member may mark such Data with the appropriate restrictive legend for which the Data qualified under the prior contract or license unless the Government receives such Data with less restrictions under this Agreement.
8. The Government shall have unlimited rights in all unmarked Data. In the event that the Consortium Member learns of a release to the Government of its unmarked Data that should

- have contained a restricted legend, the Consortium Member will have the opportunity to cure such omission going forward by providing written notice to the Agreements Officer, through the CM, within one (1) year of the erroneous release.
9. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:
    - a. Data not identified with a suitable, notice or legend as set forth in this clause; nor,
    - b. Information contained in any Data for which disclosure and use is restricted under the Security Requirements clause of this Agreement, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the Consortium Member is required to furnish to the Government without restriction on disclosure and use.
  10. Validation of Restrictive Markings
    - a. The DFARS clause 252.227-7037 Validation of Restrictive Markings on Technical Data is incorporated into this Agreement by reference, with all mention of Contractor understood to mean the Consortium Member and all mention of Contracting Officer understood to mean Agreements Officer.
    - b. Unjustified Data markings: The rights and obligations of the parties regarding the validation of restrictive markings on Data furnished or to be furnished under this Agreement are contained in the Validation of Restrictive Markings on Technical Data clause of this Agreement. Notwithstanding any provision of this Agreement concerning inspection and acceptance, the Government may ignore or, at the Consortium Member awarded a project's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings clause of this Agreement, a restrictive marking is determined to be unjustified.
    - c. A nonconforming marking is a marking placed on Data delivered or otherwise furnished to the Government under this Agreement that is not in the format authorized by this Agreement. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings clause of this Agreement. If the Agreements Officer notifies the Consortium Member awarded a project of a nonconforming marking and the that Consortium Member fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at that Consortium Member's expense, remove or correct any nonconforming marking.
  11. Throughout performance of this Agreement, it is required that each Consortium Member awarded a project, and its subagreement holders or suppliers that will deliver Data with other than unlimited rights, shall:
    - a. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
    - b. Maintain records sufficient to justify the validity of any restrictive markings on Data delivered under this Agreement.
  12. The Consortium Member reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the Consortium Member. The Consortium Member hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Agreement and any Project Agreement executed under this Agreement, and to authorize others to do so, subject to the limitations on disclosure contained in this Agreement.
  13. In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data

existed prior to, or was produced outside of this Agreement, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement and any Project Agreement executed under this Agreement with the written permission of the Copyright holder.

14. The Consortium Member shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the Data to be delivered under this Agreement unless the Consortium Member is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable Data of the appropriate scope set forth in this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
15. Except that copyrighted Data that existed or was produced outside of this Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.
16. The Consortium Member is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Agreement.
17. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.
18. In addition to Data specified in any Project Agreement executed under this Agreement to be delivered hereunder, the Government may, at any time during the performance of the Project Agreement or within a period of three (3) years after acceptance of all items (other than Data) to be delivered under the Project Agreement or the termination of the Project Agreement, order any Data generated under this Project Agreement or any subagreement hereunder, except for Data related to the Consortium Member's internal development milestones (as defined in the Statement of Work). When the Data is ordered, the Consortium Member shall be compensated for converting the Data into the prescribed form, for reproduction and delivery. The obligation to deliver the Data of a subagreement holder and pertaining to an item obtained from the subcontractor shall expire three (3) years after the date the Consortium Member accepts the last delivery of that item from that subagreement holder under the Project Agreement.
19. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under the Project Agreement that the Consortium Member uses to prepare, or includes in, derivative computer software or computer software documentation.
20. The Consortium Members shall include this clause, suitably modified to identify the parties, in all subagreements or lower tier agreements, regardless of tier, for developmental prototype work.
21. The obligations of the Government and the Consortium Member under this clause shall survive after the expiration or termination of this Agreement.

### **19. Right to Develop Independently**

Nothing in this Agreement will impair any Party's right to independently acquire, license, develop or have developed, utilize or otherwise exploit information and technology with the same or similar uses or functions as the information or technology that is the subject of the Agreement's Technical Areas or any Project Agreement issued pursuant to this Agreement.

### **20. Inspection and Acceptance**

The Government has the right to inspect and test all materials furnished and services performed under this agreement, to the extent practicable at all places and times, including the period of

performance, and in any event before acceptance. The Government may also inspect the plant or plants of any Consortium Member or any subagreement holder engaged in Project Agreement performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

If the Government performs inspection or tests on the premises of the Consortium Member or subagreement holder engaged in a Project Agreement performance, the Consortium Member shall furnish and shall require subagreement holders to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

Unless otherwise specified in Project Agreements, the Government will accept or reject deliveries as promptly as practicable after delivery.

If the Consortium Member fails to proceed with reasonable promptness to perform required replacement or correction, the Government may terminate the prototype project.

This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under the Project Agreement.

## **21. Shipping Provisions**

Specific shipping instructions will be included in Project Agreements executed under this Agreement.

All deliveries shall be FOB Destination, unless otherwise stated in Project Agreements.

Risk of loss or damage to the supplies provided under prototype projects executed under this Agreement shall remain with the Consortium Member executing said project until, and shall pass to the Government upon:

1. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
2. Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

Unless otherwise specified in Project Agreements, all hardware shall be packaged in accordance with the Consortium Member's commercial best practice to ensure undamaged arrival at destination.

## **22. Cost or Pricing Data Required**

The Agreements Officer, through the CM, for each prototype project will request the amount of cost or pricing data required in order to establish a fair and reasonable price for the project.

## **23. Obligation and Payment**

Except as set forth in the Disputes clause of this Agreement, the CM's liability to make payments to the Consortium Member will not exceed the amount of funds obligated and available for payment under each Project Agreement awarded this Agreement.

### **1. Payment Method Types**

Each Project Agreement will be awarded as either a fixed price milestone payment method or a cost reimbursement milestone payment method as described below.

- a. *Fixed Price Milestone Payment Method:* Payments shall be made in accordance with the Milestone Payment Schedule of each Project Agreement, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. An acceptable invoice for adjustable fixed price milestone payments is one that

(on the invoice or on the Milestone Report):

- i. Is addressed to:  
Advanced Technology International  
315 Sigma Dr.  
Summerville, SC 29486
  - ii. contains the date of invoice, invoice number, and the Base Agreement and Project Agreement number;
  - iii. identifies the milestone number and deliverable description for any milestone(s) that are complete; and
  - iv. lists the milestone amount negotiated and contained in each Project Agreement.
- b. *Cost Plus Fixed Fee or Cost Reimbursable Milestone Payment Method (with not to exceed ceiling):* Payment is contingent upon satisfactory progress toward completion of milestones as delineated in each Project Agreement and subject to Article 25, Allowable Costs. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable Project Agreement, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. Per (iii) below, either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a deliverable report, or a milestone report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached status, deliverable, or milestone report in accordance with each Project Agreement):
- i. Is addressed to:  
Advanced Technology International  
315 Sigma Dr.  
Summerville, SC 29486
  - ii. contains the date of invoice, invoice number, and the Base Agreement and Project Agreement number;
  - iii. identifies any associated technical milestones and the progress toward completion of each milestone;
  - iv. includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, fixed fee, if applicable, and extended totals;
  - v. indicates the current period and cumulative manhours and costs incurred through the period indicated on the invoice; and
  - vi. contains the following certification statement and signature:  
"I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received."  
Authorized Signature \_\_\_\_\_
- c. *Cost Reimbursable, Cost Sharing Milestone Payment Method (with not to exceed ceiling):* Payment is contingent upon satisfactory progress toward completion of milestones as delineated in Project Agreement and acceptable cost share, and subject to Article 25, Allowable Costs. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable Project Agreement, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. Per (iii) below, either a status report identifying any associated technical tasks and the progress toward completion of each milestone, a deliverable report, or a milestone report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or

on the attached status, deliverable, or milestone report in accordance with each Project Agreement):

- i. Is addressed to:  
Advanced Technology International  
315 Sigma Dr.  
Summerville, SC 29486
- ii. contains the date of invoice, invoice number, and the Base Agreement and Project Agreement number;
- iii. identifies any associated technical milestones and the progress toward completion of each milestone;
- iv. includes a report of the cost share expended towards the accomplishment of the SOW tasks and/or milestones. This cost share report may be attached to the invoice if contractor practices make inclusion of such information on the invoice itself impractical. If the cost share report is separate from the invoice, it must be signed by an authorized representative. This cost share report must contain a breakout of the cost share by cost element similar to the level of detail required on the invoice and any in-kind contributions. The preferred method of reporting cost share is to provide an invoice for actual cost incurred with a value for the cost shared amount and the value to be reimbursed by the Government through the CM;
- v. includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, and extended totals;
- vi. indicates the current period and cumulative manhours and costs incurred through the period indicated on the invoice; and
- vii. contains the following certification statement and signature:  
“I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received.”  
Authorized Signature \_\_\_\_\_

## 2. Submission of Invoices

Invoices may be submitted at least once a month. The Consortium Member shall submit invoices and any necessary supporting documentation via email to [utic.invoices@ati.org](mailto:utic.invoices@ati.org).

The Consortium Member’s final invoice (completion invoice) will be clearly indicated as such and shall indicate the cumulative amounts incurred and billed to completion, and a written certification of the total hours expended. Actual project costs incurred and cost share performance, if applicable, of each Project Agreement shall be reported and reviewed each month.

## 3. Payment Terms

Payment terms are NET 30 days after CM’s receipt of an acceptable invoice. An acceptable invoice is one that meets the conditions described in this article.

## 24. Accounting Systems Requirements

The Consortium Member shall maintain adequate records to account for the control and expenditure of Government funds received under this Agreement.

The Consortium Member shall establish and maintain accounting systems that:

1. Comply with Generally Accepted Accounting Principles
2. Control and properly document all cash receipts and disbursements.



## **25. Allowable Costs**

Federal funds and any Consortium Member's cost sharing funds are to be used only for costs that a reasonable and prudent person would incur in carrying out the Project Agreement.

No Project Agreement will be made under this Agreement on a cost reimbursement basis unless the Consortium Member performing under the Project Agreement has an accounting system that:

1. Is capable of identifying and segregating costs to individual agreements
2. Provides for an equitable allocation of indirect costs.

When a Consortium Member performing under a Project Agreement has a system capable of identifying the amounts/costs, the Consortium member will identify the basis for determining actual costs.

If a Consortium Member performing under a Project Agreement is subject to Contract Accounting Standards on other agreements or contracts, then the allowable costs for Project Agreements executed under this Agreement on a cost reimbursement basis are only allowable for reimbursement subject to the cost principles of Federal Acquisition Regulation (FAR) Part 31, Defense Federal Acquisition Regulation Supplement (DFARS) Part 231, and Navy and Marine Corps Acquisition Regulation Supplement (NMCARS) Part 5231, with all mention of Contractor understood to mean the Consortium Member and all mention of Contracting Officer understood to mean Agreements Officer.

## **26. Incremental Funding**

If a Project Agreement executed under this Agreement is incrementally funded, then the CM is not obligated to reimburse the Consortium Member for costs incurred in excess of the total amount allotted by the Government to the Project Agreement and the Consortium Member is not obligated to continue performance on the Project Agreement (including actions under the Termination clause of this Agreement) or otherwise incur costs in excess of:

1. The amount then allotted to the Project Agreement by the Government through the CM or;
2. If the Project Agreement involves cost-sharing, the amount then allotted by the Government to the Project Agreement plus the Consortium Member's corresponding share, until the CM notifies the Consortium Member in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to the prototype project.

## **27. Acceptable Cost Share**

An acceptable Cost Share must be verifiable from financial records and must not be included as a cost sharing contribution for any other Federal Government contract vehicle. Cost Share cannot be paid by the Federal Government under another contract vehicle, except that Independent Research and Development (IR&D) costs that otherwise meet the Cost Share requirements of 10 U.S.C. § 2371b are allowable subject to the cost principles of FAR 31.205-18 applicable to IR&D costs.

## **28. Payments**

The CM's liability to make payments to the Consortium Member is limited only to those funds obligated under Project Agreements executed under this Agreement. The CM as directed by the Government may incrementally fund projects in accordance with the Incremental Funding clause. If a modification becomes necessary in performance of Project Agreements the CM, and the Consortium Member shall establish and execute a revised Schedule of Payable Milestones consistent with the current project plan based on direction from the Agreement Officer.

All schedules of Milestone Payments for Project Agreements will include the applicable negotiated

Line Items and Payable Milestones for each selected and funded prototype. For fixed price prototype projects payments will be based on the completed milestone performed by the Consortium Member, and for cost type prototype projects, payments will be based on actual costs incurred.

Any costs incurred prior to the execution of any Project Agreement will be the sole responsibility of the Consortium Member and will not be used as the basis of a claim against or construed as an obligation to the CM or Government.

## **29. Retention and Access to Records for Consortium Members Awarded a Project Agreement**

1. Consortium Member's financial records, supporting documents, statistical records, and all other records pertinent to an other than fixed price Project Agreement shall be retained and access to them permitted for a period not to exceed three (3) years after expiration of the term of the applicable Project Agreement, unless one of the exceptions in paragraph 2 applies.
2. Exceptions:
  - a. If any litigation, claim, or audit is started before the expiration of the 3 year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
  - b. Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.
  - c. When records are transferred to or maintained by the DoD Component that made the award, the 3 year retention requirement is not applicable to the Consortium Member.
3. If the information described is maintained on a computer, the Consortium Member shall retain the computer data on a reliable medium for the time period prescribed. The Consortium Member may transfer computer data in machine readable form from one reliable computer medium to another. The Consortium Member's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. The Consortium Member shall also maintain an audit trail describing the data transfer.

## **30. Comptroller General Access to Information**

1. In accordance with 10 U.S.C. § 2371b, each Project Agreement awarded under this Agreement that provides for payments in a total amount in excess of \$5,000,000 shall provide for the Comptroller General, at the discretion of the Comptroller General, to examine the records of any party to the Agreement or any entity that participates in the performance of Project Agreements.
2. The requirement in paragraph 1 shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.
3. The right provided to the Comptroller General in a clause of an agreement under paragraph 1 is limited as provided in paragraph 2 in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under 10 U.S.C. § 2371.
4. The only records of a party, other entity, or subordinate element referred to in paragraph 2 that the Comptroller General may examine in the exercise of the right referred to in that paragraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such paragraph that were entered into by that particular party, entity, or subordinate element.
5. The Comptroller General may not examine records pursuant to a clause included in a Project Agreement under paragraph 1 more than three years after the final payment is made by the



United States under the OTA.

### **31. Close-out Procedures**

The Consortium Member shall, at least 60 days prior to the expiration date of each Project Agreement, contact the CM to establish:

1. All steps needed to close out the award;
2. A schedule for completing those steps.

The following provisions shall apply to the closeout:

1. The Consortium Member shall account for any real property and personal property acquired with Federal funds or received from the Federal Government in accordance with the terms of the Agreement.

The closeout of a Project Agreement does not affect any of the following:

1. Any specified audit requirements.
2. Any specified property management requirements.
3. Records retention as required by the Agreement.

After closeout of the Project Agreement, a responsibility or requirement created under the Project Agreement may be modified or ended in whole or in part with the consent of the Agreements Officer through the CM and the Consortium Member, provided the responsibilities of the Consortium Member referred to in the Project Agreement, including those for property management as applicable, are considered and provisions are made for continuing responsibilities of the Consortium Member, as appropriate.

### **32. Property**

Project Agreements will identify any and all Government Furnished Property (GFP) for use with that project.

Consortium Members who have an adequate property management system as defined in FAR 52.245-1 are subject to FAR clause 52.245-1, with all mention of Contractor understood to mean the Consortium Member and all mention of Contracting Officer understood to mean Agreements Officer.

Consortium Members who do not have an adequate property management system as defined in FAR 52.245-1 shall assume the risk of and be responsible for any loss or destruction of, or damage to, any GFP while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. All property shall be returned at the end of the project in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of the project regarding its use. The Consortium Member shall obtain explicit written authorization by the Agreement Officer for any transfer or disposition of GFP.

Title to any item of property valued at \$5,000 or less or property with a proposed value greater than \$5,000 that was included in the final proposal selected by the Government and that is acquired by a Consortium Member pursuant to performance under a Project Agreement shall remain with the Consortium Member upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. If an item of property with an acquisition value greater than \$5,000 is required after award, the Consortium Member shall obtain prior written approval, if not included in the final proposal selected by the Government, from the Agreements Officer prior to acquisition. Title to this property shall remain with the Government unless the Agreements Officer grants title to the Consortium Member prior to acquisition.

Consortium Members shall be responsible for the maintenance, repair, protection, and preservation of all property acquired under this Agreement at its own expense.

Property acquired pursuant to this clause shall be considered a Government contribution to the project.

### **33. Registration in the System for Award Management**

The Consortium Member awarded a Project Agreement shall hold a current, valid registration in the System for Award Management (SAM) throughout the life of this Agreement.

### **34. Compliance with Laws Unique to Government Procurement**

The Consortium Member awarded a Project Agreement agrees to comply with 31 U.S.C. § 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. § 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. § 4712 and 10 U.S.C. § 2409 relating to whistleblower protections; 49 U.S.C. § 40118, Fly American; 41 U.S.C. chapter 21 relating to procurement integrity; and 22 U.S.C. Chapter 78 relating to Combating Trafficking in Persons.

### **35. Disclosure of Information**

1. The Consortium Member shall not release to anyone outside the Consortium Member's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of any Project Agreement or any program related to a Project Agreement, unless:
  - a. The Agreements Officer has given prior written approval;
  - b. The information is otherwise in the public domain before the date of release; or
  - c. The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS 252.204-7012) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4).
2. Requests for approval under paragraph (1)(a) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Consortium Member shall submit its request to the Agreements Officer, through the CM, at least 10 business days before the proposed date for release.
3. The Consortium Member agrees to include a similar requirement, including this paragraph (3), in each subagreement under any Project Agreement. Subagreement holders shall submit requests for authorization to release through the Consortium Member to the Agreements Officer, through the CM.

### **36. Safeguarding Covered Defense Information and Cyber Incident Reporting**

DFARS Clause 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING is hereby incorporated by reference in its entirety, with all mention of Contractor understood to mean any Consortium Member awarded a Project Agreement, all mention of subcontractor understood to mean subagreement holder, and all mention of Contracting Officer understood to mean Agreements Officer.

### **37. Security Requirements**

In the event that a Project Agreement under this Agreement requires the Consortium Member to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254). Each prototype involving classified or controlled information will have a separate DD 254, which will only be applicable to the specified Project Agreement.

### **38. Changes**

Changes in the terms and conditions of this Agreement or any prototype projects executed under this Agreement may only be made by written agreement between the CM and the Consortium Member, with the approval of the Agreements Officer as applicable.

### **39. Safety**

The Consortium Member shall adhere to all local, state, and federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of this Agreement. During the course of a project, the Consortium Member, through the CM, shall report any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage or Government property exceeding \$10,000; affecting program planning or production schedules; degrading the safety of equipment under contract, such as personnel injury or property damage may be involved; identifying a potential hazard requiring corrective action.

### **40. Environmental Requirements**

The Consortium Member shall comply with all federal, state, and local environmental laws and regulations, Executive orders, treaties and agreements when executing prototype projects under this Agreement. The recipient shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during the conduct of efforts undertaken under this Agreement.

The Consortium Member shall give consideration to alternative materials and processes in order to eliminate reduce or minimize hazardous waste being generated.

The Consortium Member shall not use Class 1 Ozone Depleting Chemicals in executing prototype projects under this Agreement.

### **41. Export Control**

The Consortium Member shall comply with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

The Consortium Member shall include this clause, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for developmental prototype work.

### **42. Organizational Conflicts of Interest**

Throughout performance, the Consortium Manager is required to monitor all potential conflicts of interest, to include conflicts between its members and the contractors currently developing for and operating the targeted prototype or information systems.

The Consortium Member shall ensure prototype-level performance does not conflict with system development or enhancement being performed under other agreements or contracts.

The Consortium Member shall immediately report all potential conflicts of interest to the CM, which will then in turn report to the Government. All white papers and proposals will address potential conflicts of interest and any proposed mitigation.

The Government has the right to limit the Consortium Member's involvement under this Agreement or other action to mitigate Organizational Conflicts of Interest. In the event the Consortium Member believes that the OCI can be mitigated, the Consortium Member shall submit to the Agreements Officer, through the CM, an OCI mitigation plan.

#### **43. Limitation of Liability**

For the purposes of this Article, "Parties" means the Consortium, the CM, the Consortium Member, and the Government where collectively identified and "Party" where each entity is individually identified.

With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other, employees of the other, the others' related entities (e.g. contractors, subcontractors), or employees of the others' related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

The Parties shall not be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

The Consortium Member agrees to extend the waiver of liability as set forth above to subagreement holders at any tier performing project awards under this Agreement by requiring them, by contract or otherwise, to agree to waive all claims against the Parties to this Agreement.

#### **44. Force Majeure**

No failure or omission by the CM or Consortium Member in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the failure or omission arises from a cause beyond the control of the Parties, including, but not limited to the following: acts of God; acts of the Government in either its sovereign or contractual capacity; changes to any rules, regulations, or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof, unless affected by modification to the agreement; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion, provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable.

#### **45. Disputes**

For the purposes of this Article, "Parties" means the Consortium, the CM, the Consortium Member, and the Government where collectively identified and "Party" where each entity is individually identified.

1. Whenever disputes arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. The Parties agree that the notification under subparagraph 2 of this clause shall not be made earlier than thirty (30) days from when the dispute arose. In no event shall a dispute that arose more than one hundred and eighty (180) calendar days prior to the notification made under subparagraph 2 of this clause constitute the basis for relief under this clause unless the Agreements Officer waives this requirement in writing.

2. Failing resolution by mutual agreement, the aggrieved Party shall notify the other Party (through the CM if Consortium Member is the aggrieved Party) in writing of the relevant facts, identifying unresolved issues, and specifying the clarification or remedy sought. The dispute will then be referred to the Chief of the Contracting Office for NUWC, Division Newport and an executive of the Consortium, who shall meet in good faith to resolve the dispute.
3. If the above are not able to resolve the dispute within sixty (60) calendar days of the date the notice under subparagraph 2 is received, then either party may pursue any remedy under the law.
4. Pending resolution of any such dispute by settlement or by final judgment, the Parties shall each proceed diligently with performance, unless otherwise mutually agreed, or the Agreements Officer, through the CM, directs, in writing, to stop performance.

#### **46. Termination**

The Government reserves the right to terminate this Agreement, or any Project Agreement executed under this Agreement, or any part hereof, at any time. In the event of such termination, the Consortium Member shall immediately stop all work thereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. The Government, through the CM, and the Consortium Member awarded the Project Agreement should negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments made prior to the termination. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to the Disputes clause of this Agreement.

If the termination is a result of a failure to comply with the terms and conditions of this Agreement or any Project Agreement executed under this Agreement, then the Government reserves the right to report the termination to the systems of record for reporting terminations for cause or default.

#### **47. Stop Work Order**

As directed by the Agreements Officer, the CM may, at any time, by written order to the Consortium Member, require the Consortium Member performing under a Project Agreement to stop all, or any part, of the work called for under the Project Agreement. Upon receipt of the Stop Work Order, the Consortium Member shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of ninety (90) calendar days after the stop work order is delivered to the applicable Consortium Member, or within any extension of that period to which the parties have agreed, the Government will either:

1. Cancel the stop work order, or
2. Terminate, in whole or in part, the work covered by the Project Agreement.

If a Stop Work Order issued under this clause is canceled, the Consortium Member shall resume work under the Project Agreement. The Government through the CM reserves the right to make an equitable adjustment in the delivery schedule or Project Agreement cost or price, or both that result from the stoppage of work. The Consortium Member performing under the Project Agreement shall assert its right to an equitable adjustment as a result of the stop work order within thirty (30) calendar days after the end of the period of work stoppage.