

INFORMATION WARFARE RESEARCH PROJECT (IWRP) CONSORTIUM BASE AGREEMENT

BETWEEN

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

AND

**INFORMATION WARFARE RESEARCH PROJECT (IWRP) CONSORTIUM BASE AGREEMENT
NO.: 20XX-XX**

Authority: IWRP Other Transaction Agreement (OTA) No. N65236-18-9-0001 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)

Table of Contents

1. Parties	5
2. Severability	5
3. Order of Precedence.....	5
4. Scope	5
5. Agreement Administration	5
6. Definitions	5
7. Agreement Duration	10
8. Consortium Administration.....	10
9. Prototype Technology Areas.....	10
10. Prototype Project Process	12
11. Pricing Arrangement for Prototype Projects.....	12
12. Status Reporting	12
13. Reporting to FPDS	13
14. Agreements Officer’s Representative.....	13
15. Industry Days and Reviews.....	13
16. Patents	13
17. Rights in Technical Data	17
18. Right to Develop Independently.....	20
19. Inspection and Acceptance.....	21
20. Shipping Provisions.....	21
21. Price Reasonableness	21
22. Invoicing.....	21
23. Accounting Systems Requirements	24
24. Allowable Costs.....	24
25. Incremental Funding	24
26. Acceptable Cost Share	25
27. Payments	25
28. Retention and Access to Records for Consortium Member Awarded a Prototype Project Agreement.....	25
29. Comptroller General Access to Information	26
30. Agreement Close-out.....	26
31. Property	27
32. Registration in the System for Award Management	27
33. Compliance with Laws Unique to Government Procurement.....	27
34. Disclosure of Information	27
35. Security Requirements	28

36.	Changes	28
37.	Safety	28
38.	Environmental Requirements	28
39.	Export Control	29
40.	Organizational Conflicts of Interest	29
41.	Limitation of Liability	29
42.	Force Majeure	30
43.	Disputes	30
44.	Termination	30
45.	Appropriate Use of Other Transaction Authority	31
46.	Safeguarding Covered Defense Information and Cyber Incident Reporting	31
47.	Stop Work Order	31

1. Parties

The parties to this Agreement are the Consortium Member identified on the cover page and the Information Warfare Research Project (IWRP) Consortium Manager (CM), as represented by Advanced Technology International (ATI).

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. Prototype Project Agreements (PPA) executed under this Agreement
- 2. Any attachments to individual Prototype Project Agreements executed under this Agreement
- 3. This Agreement
- 4. Any attachments to 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:

IWRP CM:	Advanced Technology International Mandi Ballou Sr. Contracts Manager 315 Sigma Drive Summerville, SC 29486 IWRP.contracts@ati.org
----------	--

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 Information Warfare Research Project (IWRP) Consortium 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 IWRP OTA and instruct the CM to enter into, administer, or terminate any individual Prototype Project Agreements executed under this Agreement.

“Agreements Officers 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 level or prototype project agreement level.

“Commercial item” means --

1. Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and--
 - a. Has been sold, leased, or licensed to the general public; or,
 - b. Has been offered for sale, lease, or license to the general public;
2. Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
3. Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for:
 - a. Modifications of a type customarily available in the commercial marketplace; or
 - b. Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
4. Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;
5. Installation services, maintenance services, repair services, training services, and other services if:
 - a. Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - b. The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—
 - a. “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - b. “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
7. Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

8. A nondevelopmental item, if the Agreements Officer determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

“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 installing and 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 Information Warfare Research Project (IWRP) Consortium 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 Member” means the traditional and non-traditional contractors, as well as academia and non-profits that make up the membership of the Consortium.

“Consortium Manager (CM)” is the organization acting on behalf of the IWRP Consortium to execute and administer the efforts under the OTA. The CM is prohibited from performing prototype projects under the OTA.

“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, prototype level performer, or prototype project agreement 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 Information Warfare Research Project Consortium by its Consortium Manager, Advanced Technology International, Agreement No. N65236-18-9-0001.

“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.

“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.

“Property” means any tangible personal property other than property actually consumed during the execution of work under this Agreement. For purposes of this Agreement, “property” does not include the deliverable prototype under any prototype project agreement.

“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 Prototype Project Agreement under this Agreement.

“Prototype Project Agreement (PPA)” means any individual OTA prototype project agreement awarded to a Consortium Member through orders placed in accordance with the OTA.

“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. 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.

“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 June 25, 2021. Any Prototype 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 Prototype 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 the OTA. The OTA 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 the OTA. The Consortium shall be responsible for the overall day-to-day management of Government-selected projects and all prototype projects issued to the Consortium under the OTA. The Consortium shall also be responsible for resolving performance issues that occur during performance of the OTA.

9. Prototype Technology Areas

All proposed and/or executed prototype project agreements shall be structured to leverage the Technology Areas listed below; this list may be changed at any time in order to better meet the environment or warfighter need:

- **Cyber Warfare:** Defensive and offensive technologies used to operate, configure, control, secure, maintain, and restore the infrastructures and resident data, including Internet Protocol (IP) networks, radio frequency (RF) networks, computer systems, embedded processors and controllers, process, and physical systems.
- **Data Science/Analytics Technologies:** Technologies and technical processes enabling and enhancing the reliability, assurance, integration, interoperability, delivery, value of data and information assets. Data may be derived from diverse verticals (Combat, Intelligence, Surveillance & Reconnaissance (ISR), Electromagnetic Maneuver Warfare (EMW), Cyber, etc.) includes specialized technology capabilities that capture, ingest, persist, analyze, and visualize data and help our customers perceive, visualize, and make decisions about their environment
- **Assured Communications:** Technologies providing robust, protected, resilient, and reliable information infrastructure undergirding the Navy's overall information environment and allowing uninterrupted worldwide communication between deployed units and forces ashore. Technologies will include application in multiple transmission spectrums, including RF, millimeter wave, optical; networking technologies such as application awareness, resilient routing, and attack tolerance
- **Cloud Computing:** On-demand self-service, broad network access, resource pooling, rapid elasticity, measured service, software as a service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS); Private Cloud, Community Cloud, Public Cloud, Hybrid Cloud
- **Enterprise Resource Tools:** Collection of computer programs with common business applications, tools for modeling, and development tools for building organization unique applications focused on solving enterprise-wide problems to improve the enterprise's productivity and efficiency

- Collaboration and Social Networking: Collaboration/Social interaction for sharing design patterns and best practices into our engineering culture, allowing social interaction to be aggregated, assessed, and pushed back into the supporting systems as structured data that can be used to support better decision-making.
- Autonomy: Techniques applicable to systems, incorporating assistants and decision support systems implemented through artificial intelligence and machine learning enabling them to adapt their actions to changes in their mission and operating environment without the intervention of a human operator
- Internet of Things (IoT) Embedded Systems: Various connected sensors that can be accessed or controlled remotely across an existing network infrastructure, creating opportunities for more direct integration of the physical world into computer-based systems resulting in improved efficiency, accuracy, and economic benefit in addition to reduced human intervention; encompasses computer systems that performing a particular function within a larger system without direct human interactions
- Mobility: Includes the wireless technology and infrastructure to connect and authenticate to the enterprise while enforcing enterprise specific security policies on mobile devices to access to enterprise data
- Model Based Systems Engineering (MBSE): Technologies used to support the development, management, and application of virtual constructs of varying fidelity across the spectrum of systems engineering activities; including operational capability functions, system requirements, design, analysis, verification, validation, operations, and maintenance activities
- On-Demand Manufacturing: Additive and/or Traditional manufacturing methods such as Stereo Lithography (SLA), Selective Laser Sintering (SLS), Direct Metal Printing (DMP), Color Jet Printing (CJP), Fused Deposition Modeling (FDM), and 3D Additive Manufacturing (AM)
- Assured Command and Control (AC2): Capability to exercise authority and direction when access to and use of critical information, systems and services are denied, degraded or exploited. AC2 is enabled by essential network and data link services across secured segments of the electromagnetic spectrum to transport, share, store, protect and disseminate critical mission/combat information.
- Integrated Fires (IF): Capability to fully employ integrated information in warfare by expanding the use of advanced electronic warfare and offensive cyber effects to complement existing and planned air, surface and subsurface kinetic weapons.
- Battlespace Awareness (BA): Advanced means to rapidly sense, collect, process, analyze and evaluate information content to exploit the warfighting operating environment. BA uses AC2 and IF elements to provide the characteristics and conditions to understand the operating environment. BA is aided by passive discrimination, identification and tracking of objects, persistent sensing and real-time/multi-spectral awareness, and cyber situational awareness within the operating environment.

This list is provided for information purposes only and should be used only as a gauge of potential requirements. The contemplated scope of the Agreement will encompass all 14 technical areas as shown above and will be memorialized in the final award.

10. Prototype Project Process

The Government will seek prototype projects by issuing requests for prototype projects to the Consortium detailing mission needs and prototype objectives. These requests will mainly be on an ad-hoc basis with an expected increase in the third quarter of every fiscal year.

Each request will include a description of the problem statement and the basis for evaluation.

The CM shall publicize the request 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 submission, and may request further proposal information based on this evaluation. The Government will identify the basis for evaluation in each request.

These submissions may be written, oral, or both, as specified in each individual request. The Government will then evaluate 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 prototype projects based on these evaluations. In no way does selection guarantee award of the related prototype project.

The Government reserves to the right to consider prototype project submissions (e.g. white papers and proposals) for each prototype requirement for up to 36 months after submission. These prototype projects may be funded at any time during the 36-month period after the Government has reconfirmed validity of the submission.

In accordance with 10.U.S.C. 2371b(f), and upon a determination that this competitively awarded prototype project agreement has been successfully completed, prototype project agreements awarded under this Agreement may result in the award of a follow-on production contract or transaction directly with the IWRP Consortium Members who performed the prototype project agreement without the use of competitive procedures.

Prototypes and/or production items delivered under a prototype project agreement executed under this Agreement shall be wholly owned by the Government and may be provided to others as government-furnished equipment (GFE) under subsequent prototype projects and/or contracts.

11. Pricing Arrangement for Prototype Projects

Prototype project agreements awarded under the Agreement will be awarded on a fixed price or expenditure-based basis, depending on the nature of each specific prototype project agreement. This will be clearly defined in each order placed for prototype project agreements.

12. Status Reporting

The Consortium Member executing prototype project agreements executed under this Agreement shall provide status reporting as specified in each prototype project agreement. For the projects that are 120 days or less, the status reports will provide an update towards completion of each milestone. For projects over 120 days, the status reports will be quarterly in the format provided with the PPA. Upon completion of the project, a final report must be submitted in the format provided with the PPA to include a recap of the project that may be used for public release purposes.

The Consortium Member awarded a prototype project agreement shall provide reports in accordance with the Data Requirements attached to the prototype project agreement.

13. Reporting to FPDS

Prototype project agreements 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>.

14. Agreements Officer's Representative

The Government will designate an AOR for each prototype project agreement awarded under this Agreement. The designation will be included in each prototype project agreement, 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 prototype project agreement.

15. Industry Days and Reviews

The Government will collaborate with the CM to organize and schedule quarterly IWRP Consortium Exchange/Industry Day events. The CM will host the events, however, they will coordinate with the Government to determine the best value for the venue, logistics, etc. Two quarterly events will be held on the East Coast supporting SPAWARSYSCEN Atlantic Areas of Responsibilities. Two quarterly events will be held on the West Coast supporting SPAWARSYSCEN Pacific Areas of Responsibilities. The events will be set up in a manner to allow virtual presence from SPAWARSYSCOM Enterprise government members to participate if they are geographically not able to attend in person. The goals of the quarterly events will be to bring government, academia, and industry together around mission needs and potential solutions. IWRP Consortium Exchange/Industry Day events will be advertised through the consortium website and other communication channels. If non-Consortium Members are invited, then the Industry Day event will also be advertised in Federal Business Opportunities (FEDBIZOPPS). 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 IWRP Consortium Exchange/Industry Days, the Government will develop and share an IWRP Prototype Program Plan in advance that provides a draft schedule of upcoming prototype projects, including forecasted spending. The Government Program Manager will prepare the first IWRP Program Plan within 30 days of award of this Agreement, which will be presented at the first IWRP Industry Day.

The IWRP Consortium Exchange/Industry Day events will allow opportunities for Consortium Members to present research projects to the Government for consideration. A schedule will be established in advance to allow presentations in a manner to allow the widest possible participation while ensuring that the intent of the event is maintained.

The CM shall also provide an annual review of the overall performance of all individual prototype projects executed under this Agreement. The review shall consist of a brief status report of the performance of each individual prototype project 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. The annual review is due by November 30 for the previous GFY.

16. Patents

Each Consortium Member awarded a prototype 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 Prototype Project 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.
 - c. For every Subject Invention to which the Consortium Member has elected to retain title, the Consortium Member shall—
 - i. File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;
 - ii. File a nonprovisional application within ten (10) months of the filing of any provisional application; and
 - iii. File patent applications in additional countries or international patent offices, if desired by Consortium Member, within either ten (10) months of the first filed patent application (whether provisional or nonprovisional) or six (6) months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
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 prototype 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 Code of Federal Regulations (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 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. N65236-18-9-0001, awarded by SPAWARSYSCEN Atlantic. 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.

11. Patent Indemnity

- a. If applicable, the prototype project agreement will include a list of Commercial Items to be manufactured and delivered to which this indemnification (Article 17, paragraph 11) applies.
- b. For such identified items, the Consortium Member awarded the prototype project agreement shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of Commercial Items.
- c. This indemnity shall not apply unless the Consortium Member shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to –
 - i. An infringement resulting from compliance with specific written instructions of the Agreements Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the prototype project agreement not normally used by the Consortium Member;
 - ii. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
 - iii. A claimed infringement that is unreasonably settled without the consent of the Consortium Member, unless required by final decree of a court of competent jurisdiction.

17. Rights in Technical Data

1. The Government shall have Government Purpose Rights (GPR) in Technical Data, Computer Software, and Computer Software Documentation delivered under this Agreement, except as provided in paragraphs 2, 3, and 4.
2. Unless otherwise specified in individual prototype projects, 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. Consortium Members shall attach to any offer submitted under this Agreement a list of all documents or other media incorporating technical data or computer software it intends to deliver with less than Government Purpose rights. The list shall identify the technical data or computer software to be furnished with restrictions, the basis for asserting less than Government Purpose Rights for each listing, the degree of restriction asserted for each listing, the duration of the restriction, and the name of the person or company asserting the restriction.

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 an individual prototype project, or any restrictions on the Government's rights to use, modify, reproduce, display or disclose the data have expired or no longer apply.
5. The Consortium Member awarded a prototype project agreement, 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, through the CM, 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 prototype 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:

“Government Purpose Rights” (or **Limited Rights** as the case may be)

Prototype Project Agreement No.

Consortium Member Name

Consortium Member Contact 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; or,
 - 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 or Consortium Member is required to furnish to the Government without restriction on disclosure and use.

10. Validation of Restrictive Markings

- a. An unjustified marking is a restrictive marking placed on Data delivered or otherwise furnished to the Government under this Agreement where the restriction is not justified. The Government may ignore or, at the Consortium Member's expense, correct or strike a marking if a restrictive marking is determined to be unjustified. A restrictive marking will be determined to be unjustified if:
 - i. after sixty (60) days from receiving a request for marking justification information from the Agreements Officer, the Consortium Member fails to respond to such request, or
 - ii. the Consortium Member provides information in response to a request for marking justification information from the Agreements Officer that, in the opinion of the Agreements Officer, fails to justify the level of restriction. If the Consortium Member disagrees with the opinion of the Agreements Officer, the disagreement shall be settled in accordance with the Article 43, Disputes.
- b. 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 procedures outlined above for unjustified markings. If the Agreements Officer notifies the Consortium Member awarded a prototype project agreement of a nonconforming marking and the Consortium Member fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the 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 prototype project agreement, 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 awarded a prototype project agreement 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 prototype project 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 prototype project agreement executed under this Agreement with the written permission of the Copyright holder.

14. The Consortium Member awarded a prototype project agreement shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data, including open-source software, 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 in any prototype project agreement executed under this Agreement to be delivered hereunder, the Government may, at any time during the performance of the prototype project agreement or within a period of three (3) years after acceptance of all items (other than Data) to be delivered under the prototype project agreement or the termination of the prototype project agreement, order any Data generated under the prototype project agreement or any subagreement thereunder, 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 prototype project agreement.
19. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under the prototype project agreement that the Consortium Member uses to prepare, or includes in, derivative computer software or computer software documentation.
20. The Consortium Member 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.

18. 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 prototype project agreement issued pursuant to this Agreement.

19. 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 prototype 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 prototype 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 prototype 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 agreement.

This clause applies in the same manner and to the same extent to correct or replacement materials or services as to materials and services originally delivered under the prototype project agreement.

20. Shipping Provisions

Specific shipping instructions will be included in the prototype project agreements executed under this Agreement.

All deliveries shall be FOB Destination, unless otherwise stated in the prototype project agreement.

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 the prototype project agreement, all hardware shall be packaged in accordance with the Consortium Member's commercial best practice to ensure undamaged arrival at destination.

21. Price Reasonableness

The Agreements Officer, through the CM, must be able to determine the amount of the prototype project agreement is fair and reasonable. The CM may need data such as commercial pricing data, market data, parametric data or cost information.

22. Invoicing

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 prototype project agreement awarded under this Agreement.

1. Payment Method Types

Each prototype project agreement will be awarded as either a fixed price milestone payment method or an expenditure based 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 prototype 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 the CM and contains the CM's address;
Advanced Technology International
315 Sigma Dr.
Summerville, SC 29486
 - ii. contains the date of invoice and invoice number and the Base Agreement and prototype 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 prototype project agreement.

- b. *Expenditure Based Milestone Payment Method (with not to exceed ceiling):* Payment is contingent upon satisfactory progress toward completion of milestones as delineated in each prototype project agreement and subject to Article 24, Allowable Costs. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable prototype 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 prototype project agreement):
 - i. Is addressed to the CM and contains the CM's address;
Advanced Technology International
315 Sigma Dr.
Summerville, SC 29486
 - ii. contains the date of invoice and invoice number and the Base Agreement and prototype 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. *Expenditure Based, Cost Sharing Milestone Payment Method (with not to exceed ceiling):* Payment is contingent upon satisfactory progress toward completion of milestones as delineated in prototype project agreement and acceptable cost share, and subject to Article 24, Allowable Costs. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable prototype 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 prototype project agreement):

- i. Is addressed to the CM and contains the CM's address;
Advanced Technology International
315 Sigma Dr.
Summerville, SC 29486
- ii. contains the date of invoice and invoice number and the Base Agreement and prototype 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 iwrp.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 prototype 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.

23. 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 awarded a prototype project agreement shall establish and maintain accounting systems that:

1. Comply with Generally Accepted Accounting Principles
2. Control and properly document all cash receipts and disbursements
3. If an expenditure based type prototype project agreement is negotiated, then the awardee must have an accounting system that is capable of identifying the amounts/costs to individual agreements/contracts. This system would be used to segregate direct costs by agreement/contract, and includes an established allocation method for equitably allocating indirect costs among agreements/contracts. The system would also document the basis for determining the interim or actual amount/costs, i.e., what constitutes direct versus indirect costs and the basis for allocating indirect costs.

24. 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 prototype project agreement. Unless otherwise authorized, travel costs shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations or other applicable standards.

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

1. is capable of identifying and segregating costs to individual agreements; and
2. provides for an equitable allocation of indirect costs.

When a Consortium Member performing under a prototype 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 prototype project agreement is subject to Contract Accounting Standards on other agreements or contracts, then the allowable costs for project awards 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.

25. Incremental Funding

If a prototype 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 prototype project agreement, and the Consortium Member is not obligated to continue performance on the prototype 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 prototype project agreement by the Government, through the CM, or;
2. If the prototype project agreement involves cost-sharing, the amount then allotted by the Government to prototype 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 agreement.

26. 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.

27. Payments

The CM's liability to make payments to the Consortium Member is limited only to those funds obligated under prototype 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 individual prototype 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 Agreements Officer.

The Consortium Member awarded an expenditure-based prototype project agreement shall notify the Agreements Officer, through the CM, in writing whenever it has reason to believe that the costs it expects to incur under the prototype project agreement in the next sixty (60) days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the prototype project agreement by the Government, or (2) if this is a cost-sharing agreement, the amount then allotted to the prototype project agreement by the Government plus the Consortium Member's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the schedule.

All schedules of Milestone Payments for individual prototype project agreements will include the applicable negotiated Line Items and Payable Milestones for each selected and funded prototype. For fixed price prototype project agreements payments will be based on the completed milestone performed by the Consortium Member, and for expenditure based prototype project agreements, payment will be based on actual costs incurred.

Any costs incurred prior to the execution of any individual prototype 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.

28. Retention and Access to Records for Consortium Member Awarded a Prototype Project Agreement

1. The Consortium Member's financial records, supporting documents, statistical records, and all other records pertinent to an other than fixed price Prototype Project Agreement shall be retained and access to them permitted for a period not to exceed three years after expiration of the term of the applicable Project Agreement, unless one of the exceptions in (2) applies
2. Exceptions
 - a. If any litigation, claim, or audit is started before the expiration of the 6-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 6 years after final disposition.

- c. When records are transferred to or maintained by the DoD Component that made the award, the 6-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.

29. Comptroller General Access to Information

1. In accordance with 10 U.S.C. § 2371b, this OTA and each prototype 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 the Agreement.
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 (1) 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 prototype project agreement under paragraph (1) more than three years after the final payment is made by the United States under the Agreement.

30. Agreement Close-out

The Consortium Member shall, at least sixty (60) days prior to the expiration date of each prototype 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 provision 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 this 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.

31. Property

Prototype project agreements will identify any and all Government Furnished Property (GFP) for use with that prototype project agreement.

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.

For expenditure-based prototype project agreements, 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 prototype 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, through the CM, 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.

32. Registration in the System for Award Management

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

33. Compliance with Laws Unique to Government Procurement

The Consortium Member awarded a prototype 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; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. § 4712 and 10 U.S.C. § 2409 relating to whistleblower protections; 41 U.S.C. chapter 21 relating to procurement integrity; and 22 U.S.C. Chapter 78 relating to Combating Trafficking in Persons. Any federal statutes that are subsequently deemed to be applicable to this Agreement will be incorporated in accordance with Article 36, Changes.

34. Disclosure of Information

1. The Consortium Member shall not disclose any information under this Agreement outside of the Consortium unless –
 - a. prior to the written approval of the Agreements Officer has been granted;
 - 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 ten (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 prototype project agreement. Subagreement holders shall submit requests for authorization to release through the Consortium Member to the Agreements Officer, through the CM.

35. Security Requirements

In the event that a prototype 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 project agreement involving classified or controlled information will have a separate DD 254, which will only be applicable to the specified prototype project agreement.

The Consortium Member agrees to insert terms that conform substantially to the language of this clause in all subagreements for prototype projects executed under this Agreement that involve access to classified information.

36. Changes

Changes in the terms and conditions of this Agreement or any prototype project agreement executed under this Agreement, except for minor or administrative corrections, unilateral Government direction, or incremental funding, may only be made by written agreement between the CM and the Consortium Member, with the approval of the Agreements Officer, as applicable.

37. 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 prototype project agreement, 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 of 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.

38. 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 should 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 project agreements under this Agreement.

39. Export Control

The Consortium Member shall comply with the International Traffic in Arms Regulation/Munitions List (22 CFR pt. 120 *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 Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for developmental prototype work.

40. Organizational Conflicts of Interest

Throughout performance, the CM 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 or real conflicts of interest to the CM, which will 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.

41. 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.

Claims by either party for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the unpaid balance of the aggregate amount of Government funding for prototype project agreements executed under this Agreement as of the time the dispute arises. In no event shall either Party be liable to the other Party 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.

Extension of Waiver of Liability. The Consortium Member agrees to extend the waiver of liability, as set forth above, to subagreement holders performing prototype project agreements by requiring them, by agreement, contract or otherwise, to agree to waive all claims against the Parties to this Agreement.

42. 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.

43. 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 paragraph (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 paragraph (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 the 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 SPAWARSYSCEN Atlantic 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 paragraph (2) is received, then either party may pursue Alternative Dispute Resolution (ADR) or other administrative or judicial remedies.
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.

44. Termination

The Government reserves the right to terminate this Agreement, or any prototype 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 covered by the termination 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 a prototype project agreement should negotiate in good faith a reasonable and timely equitable 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 Consortium Member awarded a prototype project agreement fails to comply with the provisions of this Agreement or its prototype project agreement, the Agreements Officer, through the CM, after the issuance of a cure notice, may take one or more of the following actions:

1. Withhold payments until the breach is corrected by the applicable Consortium Member;

2. Disallow all or part of the cost, including the associated fee or profit, of the activity or action causing the breach;
3. Terminate the prototype project agreement in whole or in part;
4. Take any other legally available remedies; or
5. If the termination is a result of a failure to comply with the terms and conditions of this Agreement or any prototype 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.

45. Appropriate Use of Other Transaction Authority

This Agreement is executed in accordance with the authority provided in 10 U.S.C. §2371b. All prototype project agreements executed under this Agreement must comply with §2371b, 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.

Follow-on production efforts may be executed under the OTA in accordance with 10 U.S.C. § 2371b.

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

46. 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 prototype project agreement, all mention of subcontractor understood to mean subagreement holder, and all mention of Contracting Officer understood to mean Agreements Officer.

47. Stop Work Order

As directed by the Agreements Officer, the CM may, at any time, by written order to a Consortium Member, require the Consortium Member performing under a prototype project agreement to stop all, or any part, of the work called for under the prototype project agreement. Upon receipt of the Stop Work Order, the applicable 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 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 prototype project agreement.

If a Stop Work Order issued under this clause is canceled, the Consortium Member shall resume work under the prototype project agreement. The Government reserves the right to make an equitable adjustment in the delivery schedule or prototype project agreement cost or price, or both that result from the stoppage of work. The Consortium Member performing under the prototype 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.