

# Information Warfare Research Project (IWRP) Consortium Membership Agreement

## PURPOSE

This Consortium Membership Agreement ("CMA") entered into, as of July 11, 2018, is to establish the Information Warfare Research Project (IWRP) Consortium.

**WHEREAS**, the Government has expressed an interest in collaborating, with a focus on nontraditional defense contractors and small businesses, in research and development leading to development and maturation of prototype projects in the critical field of information warfare research project;

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

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

## DEFINITIONS

HEREINAFTER the following definitions apply:

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

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

**Formation Committee** means the committee that prior to election of an Executive Committee will represent the common, collective interests of those companies and organizations that have expressed their desire and intent to form a consortium, and to guide the efforts of the represented organizations in rapidly forming the IWRP and commencing discussions with the Government regarding establishing an Other Transaction Agreement (OTA). Until such time that the Executive Committee is established, the Formation Committee will serve as the Executive Committee as described in the CMA. A CM representative shall serve as Chair of the Formation Committee.

**Formation Committee Member(s)** means those organizations set forth in Exhibit A that comprised the Formation Committee of the IWRP, which approved the CMA.

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**IWRP** means the Information Warfare Research Project Consortium, which is made up of consortium Members from industry, academia, and non-profit organizations pursuant to this CMA.

**Member or Members** means respectively an individual IWRP Member organization or the IWRP Member organizations collectively that are signatories to the IWRP Consortium Membership Agreement.

**Other Transaction Agreement or OTA** means the agreement which is entered into by the Government and the CM on behalf of the IWRP.

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

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

**ARTICLE 1: CONSORTIUM MEMBERSHIP**

**Membership.** The IWRP will be open to and include Members from industry, academic research institutions, and non-profit organizations. The Members adopt a non-exclusive, open membership policy. The Members will include additional Members in accordance with the provisions contained in the IWRP Consortium Membership Agreement. Any Members, regardless of when they join the IWRP, shall enjoy the same rights and incur the same obligations as any other Member hereunder. Membership in the IWRP will become effective upon approval of the membership application by the Executive Director.

**Membership Dues.** IWRP Members will pay non-refundable annual dues every October 1<sup>st</sup> in the amounts listed as follows: \$1,500 for large businesses and \$500 for all others (small businesses, academic institutions, and nonprofits). New Members will pay pro-rated dues payable upon initial acceptance of membership and then annual dues thereafter. The pro-rated dues structure, based upon the date of initial application acceptance, is as follows:

Large Business:		All others:	
a) October through March -	\$1,500	a) October through March -	\$500
b) April through September -	\$750	b) April through September -	\$250

Small Business Administration (SBA) size standards will be used to determine business size. Small business size standards define the largest that a business concern, including all of its affiliates, may be and yet qualify as a small [business concern](#) for SBA and most other federal programs.

**Project Award Assessment.** In addition to any initial and annual dues that all Members of the IWRP are required to pay, all recipients of Project Agreement funding shall pay the sum of 1.0% of all Government funds awarded under such Project Agreement to the IWRP via the Consortium Manager. This assessment percentage will be evaluated by the IWRP Executive Committee on a periodic basis and may be adjusted by Executive Committee Resolution.

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

- a) Current (no greater than 60 days past due) on membership dues
- b) Current (no greater than 60 days past due) on award assessment

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

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

- a) Be a U.S. firm or institution organized or existing under the laws of the United States, its territories, or possessions. For the purposes of this CMA, any agency or instrumentality of a foreign government shall not be granted membership.
- b) Not be barred from contracting with or receiving funds from the United States Government;
- c) Clearly demonstrate in their membership application that they are capable of making a technical contribution in the IWRP areas of Cyber Warfare; Data Science/Analytics Technologies; Assured Communications; Cloud Computing; Enterprise Resource Tools; Collaboration and Social Networking; Autonomy; Internet of Things (IoT) Embedded Systems; Mobility; Model Based Systems Engineering (MBSE); On-Demand Manufacturing; Assured Command and Control (AC2); Integrated Fires (IF); Battlespace Awareness (BA); and other fields related to IWRP;
- d) Contribute their respective talents and resources to the IWRP for activities such as periodic meeting attendance, committee and subcommittee participation, and other activities as may be appropriate;
- e) Maintain an active Military Critical Technical Data Agreement (Form DD 2345) with the U.S./ Canada Joint Certification Office, Defense Logistics Information Service, Federal Center, 74 Washington Ave., North Battle Creek, MI USA 49037-3084;
- f) Not transfer membership to any third party;
- g) Provide all cost and technical data as required in any IWRP solicitation to which it responds; and
- h) Abide by the terms of the Base Agreement.

## **ARTICLE 2: CONSORTIUM GOVERNANCE**

**Formation Committee.** During the start-up period of the IWRP a Formation Committee will convene to guide the establishment of the Consortium. Representatives from the Formation Committee Members (Exhibit A) will comprise the Formation Committee. A Formation Committee Charter will govern the responsibilities of the committee. Within six (6) to twelve (12) months after the start-up of the consortium, when a suitable base of members representing all categories has joined, the Formation Committee will dissolve and transition to a leadership structure by Executive Committee as described below.

**Executive Committee.** The affairs of the IWRP shall be governed by an Executive Committee of seven (7) elected representatives. The Consortium Manager shall have one, permanent seat on the Executive Committee. The other six (6) seats shall be elected from Member organizations, each to serve for a term of three (3) years. The Executive Committee shall be comprised of two (2) Members from large businesses or non-profit, three (3) Members from small businesses, and one (1) Member from academia. The Executive Committee Officers shall include a Chair, a Vice-Chair, and a Treasurer, to be selected by the Executive Committee. Three (3) of the initial roster of Executive Committee Members will have a one-time four (4) year term to provide continuity during IWRP startup. Any person serving on the Executive Committee may be relieved of his/her position at any time for cause or for no cause by a two-thirds (2/3) vote of the IWRP Executive Committee Members. Unless stated otherwise in the CMA decisions of the Executive Committee shall require a majority vote of the committee.

IWRP Executive Committee members who are not employed by the CM do not have access to member's proprietary data, are not provided advance insight of potential government solicitations, and do not have advanced insight of source selection decisions made by the government.

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

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

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

**Vice-Chair.** The Vice-Chair shall act under the direction of the Chair and in the absence or disability of the Chair shall perform the duties and exercise the powers of the Chair.

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

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

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

The Consortium Manager shall:

- Act as the point of contact for the IWRP;
- Lead the Formation Committee in negotiating with the Government on issues involving the OTA;
- Have signature authority on behalf of the IWRP;
- Provide “single point contracting” functions as needed to execute the OTA;
- Guard against the disclosure of competitively sensitive information and, together with the Executive Committee, institute policies and procedures to prevent potential violations of antitrust law;

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- Together with the Executive Committee, take appropriate steps to avoid organizational conflicts of interest among the Members and to mitigate such conflicts if they cannot be avoided;
- Be responsible for the daily management of the IWRP;
- Provide slate of candidates for the Executive Director position;
- File with the U.S. Attorney General and the Federal Trade Commission changes in Membership in accordance with the provision of the National Cooperative Research Act of 1984 within 90 days of execution of the CMA;
- Manage the finances of the IWRP to include invoicing, collecting, and tracking membership dues/ projects assessments from Member Companies.

**Executive Director.** The Executive Director shall serve on the IWRP Executive Committee as a non-voting Member. The Executive Director oversees operations of the IWRP according to the policies, procedures, and strategic direction set by the Executive Committee and will serve as the single point of contact to the member, the Government or their respective designees. The Consortium Manager will provide the Executive Director.

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

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

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

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

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

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

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

**ARTICLE 5: INDEPENDENT CONTRACTOR STATUS**

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

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

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

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

**ARTICLE 7: GENERAL PROVISIONS**

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

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

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

**IN WITNESS WHEREOF**, the Members have caused the CMA to be executed by the duly authorized representatives on the respective dates entered below.

Name: \_\_\_\_\_ (Member Organization Name)

By: \_\_\_\_\_ (Member Organization Representative)

Title: \_\_\_\_\_ (Representative's Title)

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A: FORMATION COMMITTEE MEMBERS**

AT&T GSI INC.

APOTHESOURCE, INC

LIFE CYCLE ENGINEERING, INC.

UNIVERSITY OF CALIFORNIA, SAN DIEGO

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

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

1. Proprietary Information is defined as, but not limited to, performance, sales, financial, contractual, and special marketing information (including descriptions, drawings, sample compositions, visual demonstrations, oral discussions and computer software), ideas, technical data, and concepts originated by a disclosing party, not previously disclosed to the general public, not previously available to the Recipient or others without restriction, which the disclosing party desires to protect against unrestricted disclosure or competitive use, and which is furnished pursuant to this agreement.
2. To the extent that information related to the Other Transaction Agreement is transmitted by a disclosing party to Recipient during the term of this agreement, it is agreed that, if the disclosing party deems it proprietary, the disclosing party shall set forth such information in writing and identify it by so marking such information with an appropriate legend, marking, stamp, or positive written identification on the face thereof to be proprietary to the disclosing party.
3. When disclosed orally, Proprietary Information will be identified as Proprietary Information at the time of the oral disclosure. Within thirty (30) days of disclosure, the disclosing party will confirm the disclosure in writing to the Recipient referencing the date of disclosure and specifically identifying the Proprietary Information disclosed. A disclosing party shall clearly and conspicuously mark as proprietary all Proprietary Information reduced to writing as a result of such oral disclosures.
4. When disclosed in the form of magnetic recording or some other machine readable form, Proprietary Information will be identified as Proprietary Information when transmitted. If possible, the container or form of the information will be clearly and conspicuously marked by the disclosing party as proprietary. Within thirty (30) days after disclosure, the disclosing party will confirm the disclosure in writing, referencing the date of disclosure and specifically identifying the Proprietary Information disclosed. Any physical embodiment of such information will be clearly and conspicuously marked as proprietary of the disclosing party.
5. Recipient agrees to preserve and protect all Proprietary Information from disclosures to others through the exercise of at least the same level of care it uses to preserve and protect its own Proprietary Information. Proprietary Information shall not be used, copied, or reproduced by the Recipient without the express written consent of the disclosing party. Recipient may disclose such Proprietary Information to the United States Government only in connection with work under an Other Transaction Agreement with a Government Agency and the disclosing party is a participant in the program involved with the Other Transaction Agreement and any such Proprietary Information delivered to the Government is appropriately marked in accordance with the terms of the Other Transaction Agreement which it is delivered.
6. Recipient shall not be liable for disclosure or use of any such Proprietary Information if the same:
  - a. is in the public domain, or
  - b. was known to the Recipient at the time of disclosure, or
  - c. is disclosed inadvertently despite the exercise of the same degree of care as Recipient takes to preserve and safeguard its own Proprietary Information, or

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- d. is disclosed with prior written approval of the disclosing party, or
  - e. was independently developed by the Recipient, or
  - f. is disclosed to the Recipient by a third party without breaching of this agreement, or
  - g. is disclosed or used, in any event, after the expiration of three (3) years from the date Proprietary Information is received, or
  - h. Obligated to be produced by order of a court of competent jurisdiction.
7. All documents or other materials delivered hereunder which are marked as Proprietary and any copies thereof are, and shall remain the property of the disclosing party and shall promptly be returned or destroyed, at the disclosing party's option, upon expiration of this agreement or upon the disclosing party's written request. If the disclosing party requests, the Recipient shall issue a certificate of destruction. Recipient shall retain a copy of proprietary information to the extent required to comply with the government's audit provisions contained in the IWRP Other Transaction Agreement.
  8. This Agreement shall expire ten (10) years from the last date of execution, unless extended by written agreement of the Parties. All such Proprietary Information disclosed to the Recipient or any of its employees, agents, or representatives shall be kept safe from disclosure, directly or indirectly, for a period of three (3) years from date of conveyance to Recipient.
  9. Neither the execution and delivery of this agreement nor the delivery of any Proprietary Data hereunder shall be construed as granting either expressly or by implication, estoppel or otherwise, any right in or license under any present or future data, drawings, plans, ideas or methods disclosed under this agreement, or under any invention or patent now or hereafter owned or controlled by the disclosing party furnishing the Proprietary Data.
  10. To the extent that the obligations of the Recipient hereunder involves access to information classified "Top Secret," "Secret," or "Confidential," the provisions of FAR 52.204-2 Alt 1, or corresponding regulations of the appropriate Government agency, as applicable, shall apply.
  11. Recipient as the receiver of information transmitted under this agreement acknowledges its obligations to control access to technical data under the U.S. Export Laws and Regulations and agrees to adhere to such Laws and Regulations with regard to and technical data received under this agreement.
  12. This agreement shall be governed by the laws of the State of New York, to the extent it does not conflict with the public academic research institution's state law, without giving effect to its choice of law principles.
  13. This agreement contains the entire understanding relative to the disclosure and protection of Proprietary Data. No modification or addition to any provision hereof shall be binding unless it is in writing and signed by Recipient. This agreement shall apply in lieu of and notwithstanding any specific terms contained in any legend or statement associated with any particular Proprietary Data exchanges, and the duties of Recipient shall be determined exclusively by the terms and conditions herein.