

Maritime Sustainment Technology and Innovation Consortium

Consortium Membership Agreement

PURPOSE

This Consortium Membership Agreement (“CMA”) establishes the Maritime Sustainment Technology and Innovation Consortium (MSTIC) as of August 17, 2020.

WHEREAS, Naval Surface Warfare Center Philadelphia Division (hereinafter “NSWCPD” or the “Government”), is looking to identify, shape, and secure innovative sustainment solutions to effectively address current and future security threats in maritime environments. NSWCPD intends to competitively establish a Base OTA (“OTA”) with a Consortium that will, through its members, conduct individual and collaborative efforts to carry out prototype projects directly relevant to the technology concept areas; and

WHEREAS, the Government has further expressed intent to collaborate with traditional and non-traditional defense contractors, civil maritime, and academia, to leverage their combined capability in research and development leading to development and maturation of prototype projects that include but are not limited to the following maritime sustainment technology and innovation topic areas: COTS obsolescence and tech refresh product development; data transformation; cyber; fleet introduction technologies; waterfront industrial support operations; asset fabrication, revitalization (remanufacturing) and packaging innovations; logistic and supply chain management; machinery alterations; and research and development; and

WHEREAS, the MSTIC 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 to support the Naval Surface Warfare Center Philadelphia Division, (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 MSTIC Members agree as follows:

DEFINITIONS

HEREINAFTER the following definitions apply:

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

OTA means the 10 USC § 2371(b) compliant agreement between Advanced Technology International (“ATI”) and the Government which authorizes the organization and operation of the Maritime Sustainment Technology and Innovation Consortium. The OTA will form the basis and foundation of the Base Agreement (defined herein) and will include a common rules set and flow downs (“Flow Downs”), that will be included in the Base Agreement.

Consortium Management Firm (CMF) refers to the organization acting on behalf of the MSTIC (not as an agent of any individual Member) to negotiate, execute and administer the MSTIC’s efforts under an OTA. The

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Consortium Management Firm's purpose is to perform the specific Consortium Management duties as specified in the OTA between the Government and the MSTIC, as well as support the operations of MSTIC as guided by the MSTIC Executive Committee. The Consortium Management Firm 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 MSTIC 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 CMF representative shall serve as Chair of the Formation Committee.

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

MSTIC means the Maritime Sustainment Consortium, which is made up of Consortium Members from industry, academia, and non-profit organizations pursuant to this CMA.

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

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

Other Transaction Agreement or OTA means the agreement which is entered into by the Government and the CMF on behalf of the MSTIC.

Base Agreement means the agreement between the MSTIC Consortium Management Firm and the MSTIC 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 MSTIC and is developed after the government has awarded the OTA.

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

Purpose MSTIC will exclusively support the technology concepts described in the Maritime Sustainment Technology and Innovation Concepts as detailed in the executed OTA.

ARTICLE 1: CONSORTIUM MEMBERSHIP

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

Membership Dues (if applicable). There are no annual membership dues; however the MSTIC Executive Committee will evaluate the need for membership dues on a periodic basis and may institute dues by MSTIC Executive Committee Resolution.

Project Award Assessment. In addition to any initial and annual dues that all Members of the MSTIC are required to pay, all recipients of Project Agreement funding shall pay the sum of not to exceed 1.0% of all Government funds awarded under such Project Agreement to the MSTIC via the Consortium Management

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Firm. The Executive Committee will evaluate this assessment percentage on a periodic basis and may adjust it upward or downward by Executive Committee Resolution.

Obligations to be a Member in Good Standing.

- a) Current (no greater than 60 days past due) on Membership dues (if applicable)
- b) Current (no greater than 60 days past due) on any project 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 maritime sustainment;
- d) Contribute their respective talents and resources to the MSTIC 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 MSTIC solicitation to which it responds
- h) Abide by the terms of this CMA, the Flow Downs, and accept the terms in the Base Agreement (the Base Agreement is not available until after award of the OTA from NSWCPD. In the unlikely event that the terms of the Base Agreement are unacceptable to the member organization, the member organization is free to withdraw from the consortium)

ARTICLE 2: CONSORTIUM GOVERNANCE

Formation Committee. During the start-up period of the MSTIC, the Consortium Management Firm will convene a Formation Committee to guide the establishment of the Consortium (Exhibit A). A Formation Committee Charter will govern the responsibilities of the committee. Typically within six (6) months after the award of an Other Transactions Agreement, 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 MSTIC shall be guided by an Executive Committee. The Executive Committee shall ensure that the Consortium's Purpose is upheld and executed. The Consortium Management Firm shall have one, permanent seat on the Executive Committee. Six (6) seats shall be elected from Member organizations, each to serve for a term of two (2) years. The Executive Committee shall be comprised of two (2) Members organizations classified as large businesses or non-profit, three (3) Member organizations classified as small businesses, and one (1) Member organization classified as 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 representatives will have a one-time three (3) year term to provide continuity during MSTIC 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 MSTIC Executive Committee. Unless stated otherwise in the CMA decisions of the Executive

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Committee shall require a majority vote of the committee. The Executive Committee shall use Resolutions to effect changes in policies, procedures, and operations provided such Resolutions do not constitute a Material Change to this Agreement.

The MSTIC Executive Committee representatives who are not employed by the CMF 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 representatives whose terms are expiring, or if a position becomes vacant, will be conducted electronically. The CMF shall preside over elections. The CMF will solicit nominations for the Executive Committee representatives sixty (60) days prior to each election cycle, citing incumbent Executive Committee representatives whose terms are expiring and any special organizational requirements for nominees. Incumbent Executive Committee representatives may be nominated and re-elected to successive terms, provided the organizational status of the organization they represent remains unchanged. Any Member may nominate an individual to the Executive Committee. All nominees must be employed by a "Member in Good Standing" organization as defined in this CMA. The Executive Committee will review all nominee applications to determine if the nominees meet nomination requirements. If during their term, an Executive Committee representative is no longer willing or able to serve on the Executive Committee, or if an Executive Committee representative's organization withdraws from the Consortium the vacated position will remain unfilled until the next general election cycle. Upon completion of the election process, the new Executive Committee representative will serve for the remainder of the term for the vacancy they are filling.

Voting Procedure. The voting shall be by electronic ballot, by one authorized representative from each "Member in Good Standing." Tabulation of ballots will be conducted by the Consortium Management Firm 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 overseeing 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 Management Firm for payment. The Treasurer shall approve disbursement of MSTIC funds by the Consortium Management Firm, 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 Management Firm's transactions and of the financial condition of the MSTIC.

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

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

The Consortium Management Firm shall:

- Act as the point of contact for the MSTIC;

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- Lead the Formation Committee or the Executive Committee in negotiating with the Government on issues involving the OTA;
- Have signature authority on behalf of the MSTIC;
- Provide “single point contracting” functions as needed to execute the OTA;
- Use best efforts to guard against the disclosure of competitively sensitive information and, together with the Executive Committee, institute antitrust compliance policies and procedures for the MSTIC;
- 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 MSTIC;
- Provide the Executive Director position;
- File with the U.S. Attorney General and the Federal Trade Commission changes in Membership in accordance with the provisions of the National Cooperative Research Act of 1993 within 90 days of approval of the CMA;
- Manage the finances of the MSTIC to include invoicing, collecting, and tracking Membership dues/projects assessments from Member organizations.

Executive Director. The Executive Director shall serve on the MSTIC Executive Committee as a non-voting Member. The Executive Director oversees operations of the MSTIC 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 Management Firm 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/or project award assessments. Such funds will be deposited in an account that shall be administered by the CMF under the direction of the Executive Committee.

Budget Approval Process. Annually, the CMF 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. The Executive Committee must approve any changes to the SOW and budget. The CMF shall not be obligated to perform SOW tasks if the MSTIC has insufficient funding.

Payment. The MSTIC shall pay the CMF as compensation for the performance of the services based on the approved budget. Payments shall be made by the Consortium to the CMF 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 MSTIC; and in its sole discretion, MSTIC 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 MSTIC may be dissolved by a two-thirds (2/3) vote of the Executive Committee. Upon dissolution or other termination of the MSTIC, all remaining assets of the MSTIC, 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 MSTIC) as shall be chosen by the then existing Executive Committee of the MSTIC. In the event the then existing Executive Committee of MSTIC cannot achieve a two-thirds (2/3) vote on the tax-exempt organization(s), the funds shall be distributed to the U.S. Treasury.

ARTICLE 5: INDEPENDENT CONTRACTOR STATUS

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

ARTICLE 6: INTELLECTUAL PROPERTY/ PROPRIETARY DATA

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

Member organizations may be required to provide proprietary data to the CMF in order for the CMF to successfully satisfy its obligations under this agreement and the OTA. Accordingly, a Proprietary Information Exchange/Nondisclosure Agreement is incorporated herein as Exhibit B. This agreement will govern the exchange and use of proprietary data between Members and the CMF. 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 MSTIC Executive Committee. The Executive Committee may, at its discretion, refer certain proposed amendments to the full MSTIC Membership for validation by a majority vote of the Membership.

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

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

Governing Law. This Agreement shall be governed by the laws of the State of New York, to the extent it does not conflict with the public academic research institution's state law, without giving effect to its choice of law principles. In order to bring forth a dispute under this Agreement, the Party must first provide formal notification to the 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.

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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 REPRESENTATIVES

DAVID DRAGUN
LIFE CYCLE ENGINEERING

ERIC SCHNEIDER
MCKEAN DEFENSE

Vince Procaccino
TDI Technologies

REESE HARTEY
HII / AMSEC

Cathy Hogans
NDI Engineering

Turin Pollard
Delphinus
University

EXHIBIT B: PROPRIETARY INFORMATION EXCHANGE AND NONDISCLOSURE AGREEMENT

This Exhibit B is an agreement between the Consortium Management Firm (CMF), 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 Maritime Sustainment Consortium constitutes agreement to be bound by the terms and conditions contained in this Exhibit. This agreement, unless superseded by a separately executed nondisclosure agreement between the parties, is applicable to the CMF and individual Consortium Members in order for the CMF 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

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- c. is disclosed inadvertently despite the exercise of the same degree of care as Recipient takes to preserve and safeguard its own Proprietary Information, or
 - d. is disclosed with prior written approval of the disclosing party, or
 - e. was independently developed by the Recipient, or
 - f. is disclosed to the Recipient by a third party without breaching of this agreement, or
 - g. is disclosed or used, in any event, after the expiration of three (3) years from the date Proprietary Information is received, or
 - h. Obligated to be produced by order of a court of competent jurisdiction.
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 MSTIC 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 the expiration of this Agreement.
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.