

## **Defense Electronics Consortium (DEC) MEMBERSHIP AGREEMENT**

Membership in the Defense Electronics Consortium is open to the members of the US Partnership for Assured Electronics (USPAE) that meet the eligibility requirements of the DEC. DEC members are also subject to restrictions on foreign influence as prescribed in the Cornerstone Other Transaction Agreement (OTA), under which the DEC is authorized. Membership in USPAE includes dues for the DEC. Members may terminate membership at any time by written notice to the DEC through its Consortium Management Firm (CMF), Advanced Technology International (ATI). Members' membership may be terminated upon written notice to a member for failure to comply with the Membership Obligations contained herein. The relationship of the Members established by this Membership Agreement is that of independent contractors. Nothing contained herein 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 Consortium.

**Consortium Obligations.** (ATI) is the CMF for the Defense Electronics Consortium and is under the direction of the USPAE Executive Director. The CMF will administer the affairs of the Consortium and is responsible for fulfilling the following obligations:

- Engage in business-development activity to seek opportunities with Federal, State, local and private entities for Consortium Members to conduct research, prototype development and follow-on activities that support the mission of the Department of Defense (DoD) and other Federal, State and local agencies. These activities may require updates to this Agreement or the formation of additional consortia in the appropriate technology domains.
- Promote collaboration with Government customers and other members related to prototype development projects and support members throughout the prototype development process ( training, guidance and process facilitation of the solicitation, award, project execution phases) ;
- When appropriate 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;
- Manage the finances of the Consortium; and
- Host periodic collaborative, membership meetings.

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

- Maintain active membership in good standing with USPAE;
- Unless directed otherwise by the Government, be a U.S. firm or institution organized or existing under the laws of the United States, its territories, or possessions. For the purposes of this Agreement, any agency or instrumentality of a foreign government shall not be granted Membership;
- Not be barred from contracting with or receiving funds from the United States Government;
- Be current (no greater than 60 days past due) on membership dues or other payments;
- Contribute their respective talents and resources to the Consortium for activities such as periodic meeting attendance, committee and subcommittee participation, and other activities as may be appropriate;
- Maintain an active Military Critical Technical Data Agreement (Form DD 2345) certification with the U.S./ Canada Joint Certification Office, Defense Logistics Information Service to facilitate receipt of Controlled Unclassified Information from the Government or the Consortium Management Firm;
- Not transfer Membership to any third party;
- 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; and
- Comply with all applicable U.S. antitrust laws.
- Members may need to provide proprietary data to the CMF in order for the CMF to successfully satisfy its obligations under the Management Services Agreement and the OTA. Accordingly, a Proprietary Information Exchange/Nondisclosure Agreement is incorporated herein as Exhibit A, and will govern the



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

This Exhibit A 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 Defense Electronics Consortium constitutes agreement to be bound by the terms and conditions contained in this Exhibit. This agreement is applicable to the CMF and individual Consortium Members in order for the CMF to satisfy its obligations under the Management Services Agreement 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
  - 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 Defense Electronics Consortium 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.