



## **Consortium Membership Agreement**

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## **PREAMBLE**

This Consortium Membership Agreement (the “Agreement” or “CMA”) is effective as of this 10<sup>th</sup> day of June, 2019 (“Effective Date”), and entered into by each member of the Naval Aviation Systems Consortium (“NASC”), each referred to as “Consortium Member” or “Member” and collectively as “Consortium Members”, on the date such Consortium Member executes this Agreement. The Consortium Members also may be referred to herein individually as a “Party” or collectively as “Parties.”

**WHEREAS**, NASC has executed an Other Transaction Agreement (the “OT Agreement”), dated June 6, 2019, pursuant to 10 U.S.C. § 2371b and intends to also contract with other Federal, State and local entities for the funding of certain research, prototype development and follow-on production activities to support the mission of the Department of Defense (DoD) and related other Federal, State and local agencies; and

**WHEREAS**, NASC intends to make use of its OT Agreement to help foster new relationships and practices involving Traditional and Non-traditional Defense Contractors (NDCs), broaden the industrial base available to the DoD, support dual-use projects, encourage flexible, quicker and cheaper project design and execution, leverage commercial industry investment in technology development and partner with industry to ensure DoD requirements are incorporated into future technologies and products and collaborate in innovative arrangements; and

**WHEREAS**, the Consortium Members intend to designate Consortium Management Group, Inc. (CMG) as the Lead Member for the purposes of managing the NASC and executing and administering its OT Agreement; and

**WHEREAS**, the Consortium Members intend to utilize the flexible, agile and efficient acquisition instrument provided by the OT Agreement to meet the needs of the Naval Air Warfare Center Aircraft Division (NAWCAD), Naval Air Systems Command (NAVAIR) and the Government and its agencies; and

**WHEREAS**, the Consortium Members intend to identify teaming opportunities among the membership and collaborate with NAWCAD and NAVAIR to achieve a more streamlined and integrated approach to development, demonstration and transition of innovative technologies to the Fleet; and

**WHEREAS**, NASC intends to develop and maintain a membership inclusive of Traditional and Non-traditional Defense Contractors, small businesses, nonprofit organizations, and academic and nonprofit research institutions; and

**WHEREAS**, the OT Agreement provides for certain rights and obligations arising out of the prototype projects for the Government, NASC and the Consortium Members; and

**WHEREAS**, NASC and the Consortium Members are entering into this Agreement in order to provide for (i) a consortium to conduct research, development and demonstration of prototype projects, as well as follow-on production, in naval aviation system technology areas, (ii) their respective rights and obligations as Consortium Members, (iii) administrative matters pertaining to the implementation of the OT Agreement with NAWCAD, the operation of the Consortium and the conduct of the activities of the Consortium Members, and (iv) a mechanism for guidance to the Government on the conduct of the activities of the Consortium pursuant to the OT Agreement with NAWCAD;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained in this Agreement, the NASC Members agree as follows:

## **ARTICLE I      DEFINITIONS**

When used in this Agreement, the following terms, whether used in the singular or plural, shall have the meanings set forth herein.

“Affiliate” means, with respect to a NASC Member, any corporation, company, partnership, joint venture and/or firm that now or hereafter controls, is controlled by or is under common control with such NASC Member. For purposes of this definition, “control” shall mean (i) in the case of corporations, 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 unincorporated entities, direct or indirect ownership of at least 50% of the equity interest, with the power to direct the management and policies of the entity.

“Consortium Membership Agreement” or “Agreement” or “CMA” means this Agreement governing the rights and obligations of NASC Members as they relate to the Lead Member, NASC, and to each other.

“Effective Date” means the date first written above on which this Agreement is signed and executed.

“Government” means the United States Government herein represented by NAWCAD.

“Lead Member” means the NASC Member designated in the CMA to act on behalf of the Consortium to manage NASC, facilitate the project solicitation and award process and provide administrative support to both NAWCAD and NASC Member Entities. In order to maintain independence and serve as a Trusted Agent between NAWCAD and the NASC membership, the Lead Member will not be able to respond to project solicitations or participate on project teams. CMG is the intended Lead Member for the duration of this Agreement.

“Milestone” or “Payable Milestone” means a milestone for which an invoice will be submitted by the Project Award Holder (PAH) for approval by NAWCAD. This approved payment will represent an agreed-upon dollar amount specified in the Project Agreement (PA) and will include the Lead Member management and administrative fee.

“NASC” or “Consortium” means the Naval Aviation Systems Consortium formed by industry and academia, which is comprised of Traditional and Non-traditional Defense Contractors, including small and large businesses and for-profit and nonprofit entities, and academic research institutions.

“NASC Member” or “Consortium Member” means the Non-traditional and Traditional Defense Contractors, including small and large businesses, for-profit and nonprofit entities, and academic research institutions that are or become signatories to this Agreement and maintain their membership in good standing in NASC.

“Non-traditional Defense Contractor” or “NDC” means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under

the cost accounting standards prescribed pursuant to section 1502 of title 41 of the U.S. Code and the regulations implementing such section.

“OT Agreement” means Other Transaction Agreement No. N00421-19-9-0001 executed by NAWCAD and NASC.

“Project Agreement” or “PA” means the award to the NASC Member Entity(ies) by NAWCAD for the execution of a specific Prototype Project (PP).

“Project Award Holder” or “PAH” means the NASC Member Entity responsible for executing a PP pursuant to a PA and a signatory to the PA with NAWCAD.

“Prototype Project” or “PP” means an effort proposed by a NASC Member Entity(ies) and selected by NAWCAD for award under the OT Agreement that is directly relevant to enhancing mission effectiveness of military personnel and supporting platforms, systems, components or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components or materials in use by the armed forces as defined in 10 U.S.C §2371b.

“Technology Areas” means the broad technology areas identified by NAWCAD within the OT Agreement.

## **ARTICLE II CONSORTIUM STRUCTURE**

**Background.** As of the Effective Date of this Agreement, NASC Members agree to join the NASC, an unincorporated association of entities from industry, nonprofit enterprises and academia, and adhere to its terms and operating procedures. NASC was initiated in response to the Government’s expressed desire for industry and academia to form a consortium to facilitate research and prototype development, in cooperation with NAWCAD, and potentially other Government agencies, in Naval Aviation Technology Areas. The Government and NASC Members, through the consortium management structure defined herein, will conduct research, prototype development and follow-on production activities to develop and transition new and innovative technologies in these areas. All NASC Members, except for the Lead Member, shall be eligible to respond to all Government solicitations announced through the OT Agreement process. As set out herein, the Lead Member is prohibited from responding to any Government solicitation announced pursuant to the OT Agreement. Each NASC Member who is awarded a PP shall execute a separate PA directly with the Government that defines the project requirements, terms and conditions and milestone payment schedule. PAHs are responsible for payment of the Lead Member management and administrative fee, as defined in Article IX.

**Consortium Members.** NASC comprises Traditional and Non-traditional Defense Contractors, small businesses, nonprofit organizations and academic institutions. NASC is open to, and will include, all interested entities that have capabilities in at least one of the Naval Aviation Systems Technology Areas set out in the OT Agreement with NAWCAD. Membership is further contingent on prospective members agreeing to and signing this CMA. Consortium Members attest that they are not excluded from contracting with, or receiving funds from, the Government. The Lead Member will maintain a current list of NASC members.

**Relationship of Consortium and Members.** This Agreement governs the operation of the Consortium, the relationship between the NASC and NASC Members and the interactions among the Consortium Members. This Agreement may be amended at the discretion of the Lead Member to serve the best

interests of the Consortium or in response to a modification of the OT Agreement. In the case of a material modification to this Agreement, NASC Consortium Members will be notified and will be allowed to withdraw from the Consortium if the modification is not accepted. This Agreement shall not be disclosed to any third party.

**Purpose of Consortium.** The specific objectives of NASC are:

1. Facilitate collaboration between Naval Air Warfare Centers (“NAWC”), NAVAIR and NASC Members so that the Government achieves a greater awareness of emerging technologies in the commercial marketplace and industry achieves a greater awareness of the NAWC’s and NAVAIR needs.
2. Deliberately mature specified technologies and demonstrate them in operationally relevant environments.
3. Develop and mature technologies in a manner that enables rapid transition to the Warfighter.
4. Ensure the nature of the Agreement facilitates and eases the entry of NDCs into the Defense marketplace.
5. Provide for follow-on production at the Government’s discretion for prototypes determined to be successful by the Government.

### **ARTICLE III LEAD MEMBER DESIGNATION**

The Members agree to the designation of CMG as the Lead Member of NASC. As such, CMG will be solely responsible to act on behalf of the Consortium to manage the NASC, facilitate the project solicitation and award process and provide administrative support and project oversight to both NAWCAD and NASC Member Entities. In order to maintain independence and serve as a Trusted Agent between NAWCAD and the NASC membership, the Lead Member will not be able to respond to project solicitations or participate on project teams. Accordingly, the Lead Member shall have no responsibility or liability for the performance of any PA issued under the OT Agreement and this CMA. The Lead Member shall:

- Act as the administrative point of contact for NASC under this Agreement and any amendments hereto;
- Represent NASC in negotiating with the Government on issues involving the OT Agreement;
- Provide administrative contracting functions and project oversight, as needed for project-specific Statements of Work “SOW”;
- Guard against the disclosure of competitively sensitive information and institute policies and procedures to prevent potential violations of antitrust law;
- File the appropriate Consortium notifications with the U.S. Department of Justice and the U.S. Federal Trade Commission pursuant to the National Cooperative Research and Production Act of 1993;
- Take appropriate steps to avoid organizational conflicts of interest among the Members and to mitigate such conflicts if they cannot be avoided; and
- Be responsible for obtaining signatures of the Members on any amendments to this Agreement.

The Lead Member shall provide the following services to NASC Members:

- Mentor new members on how to respond to NAWCAD project solicitations;
- Facilitate teaming opportunities among members to promote integrated responses;

- Advise members on White Paper “WP” preparation;
- Link NASC members with potential sources of third-party project financing;
- Conduct compliance reviews of member WPs to ensure statutory compliance;
- Verification of basis-of-estimate for Rough Order of Magnitude “ROM” pricing in member WPs;
- Assist with Intellectual Property “IP” treatment and data rights assertions;
- Advise members on Proposal preparation;
- Conduct compliance reviews and analyze/verify detailed pricing in member proposals;
- Provide post-award support, including:
  - Assisting with management of project cost, schedule and performance;
  - Tracking of project deliverables;
  - Ensuring proper use of data rights legends;
  - Assisting with member project invoicing and payment process;
  - Assisting with managing disposition of Government property;
  - Coordinating Public Release of information;
  - Assisting with reporting subject inventions;
  - Facilitating follow-on production;
  - Facilitating project close-out; and
- Invoice, collect and track annual dues from NASC Members and payments, as applicable, to NASC Members.
- Invoice, collect and track Lead Member management and administrative fees from NASC Members as a result of PAs.

The Lead Member shall provide the following support to NAWCAD:

- Assist with strategic planning activities;
- Provide training to NAWC and NAVAIR Program Managers on the use of the OT Agreement;
- Host Consortium Exchange/Industry Days to:
  - Facilitate targeted growth of NASC membership;
  - Increase member participation in NAWCAD technology project competition;
  - Promote collaboration among members;
  - Provide greater awareness of emerging technologies from the private sector;
- Assist with requirements development (Statement of Need);
- Manage the Request for White Papers “RWP” solicitation process;
- Facilitate collaboration between the Government and selected NASC member(s), including:
  - SOW development;
  - Security requirement establishment;
  - Environment and Safety reviews, as appropriate;
- Manage the Request for Proposal “RFP” solicitation process;
- Conduct initial compliance reviews and analyze/verify pricing in member proposals;
- Provide post-award administration for prototype project agreements, including:
  - Oversight/management of project cost, schedule, risk and performance, as required by the cognizant Navy Program Manager;
  - Tracking deliverables;
  - Ensuring proper use of data rights legends;
  - Managing disposition of Government property;

- Coordinating public release of information;
- Assisting with reporting subject inventions;
- Facilitating project close-out;
- Rectifying unacceptable performance by a performing NASC member, including:
  - Facilitating technical and programmatic analysis to improve performance;
  - Identifying additional teaming partners required to meet project objectives;
  - Identifying alternative project performers, as required by cognizant Navy Program Managers;
  - Supporting NAWCAD termination/novation of PAs;
- Facilitate planning and integration for follow-on production, if required;
- Expand NASC membership capabilities to meet evolving technology needs in support of Naval aviation; and
- Collaborate with NAWCAD to improve efficiency of acquisition and administrative processes.

**ARTICLE IV CONSORTIUM MANAGEMENT AND ADMINISTRATION**

**Organization and Administration.** The Lead Member administers the NASC within the framework set out in this Agreement, executes the day-to-day activities of the NASC, facilitates interaction between the Government and the NASC Members and coordinates communication among the NASC Members. In accordance with the Lead Member Conflict of Interest Policy, the Lead Member directors, officers and employees are prohibited from responding, individually or in partnership with a NASC Member, to Government solicitations or from participating in any way in the technical performance of a PA.

**Consortium Membership.** Membership in the NASC is open to all qualified companies and academic institutions with the technical capabilities to conduct research and prototype development in the Naval Aviation Technology Areas identified in the OT Agreement. The membership application process will be open throughout the year. Under no circumstances may a NASC Member transfer its membership to any third party, except as set out in Article 10, Assignment. A NASC Member may withdraw from the Consortium at any time by providing written notice to the Lead Member. Membership in NASC renews automatically each year on the Member’s anniversary date, unless otherwise terminated.

**Membership Meetings and Meeting Attendance.** An annual meeting of the Consortium Membership shall be convened at a place and time designated by the Lead Member. In addition, the Lead Member may convene additional networking meetings specific to Members in a particular geographic region or technology domain. Attendance at annual and regional networking meetings is not mandatory, but all Members are encouraged to attend.

**ARTICLE V PROCESS FOR INCLUSION OR REMOVAL OF MEMBERS**

**Termination of Membership.** Membership in the NASC shall automatically terminate under the following conditions:

1. Upon written notification by a Member or by the Lead Member, or
2. After the Government elects not to extend the OT Agreement or issue a new OT Agreement to the NASC (within ninety (90) days after the expiration or termination of the relevant OT Agreement).



**Voluntary Withdrawal.** Provided that the Member has satisfied its obligations under the OT Agreement and PA(s), if applicable, the Member may voluntarily withdraw from the NASC at any time by notice of withdrawal to the Lead Member.

**Involuntary Withdrawal.** If a Member materially breaches any warranty, term or requirement of this Agreement (including failure to pay annual dues or Lead Member management and administration fee as set out in PAs) and fails to remedy such material breach within thirty (30) days after receipt of notice of such material breach from the Lead Member, the NASC shall have the right, in addition to any other remedies that NASC may have in law or equity, to cause the involuntary withdrawal from the Consortium of such Member. Such withdrawal will be effective immediately upon delivery of a notice from the Lead Member to such Member.

**Rights of a Member Entity.** Except for the rights and obligations described in this Agreement that survive the withdrawal, voluntary or involuntary, of a NASC Member, from and after the effective date of withdrawal, such Consortium Member shall retain rights only as they pertain to an ongoing PA until its completion or termination.

**Continued Funding and Technology Contribution Commitment.** In the event of the voluntary withdrawal by a NASC Member/PAH, such Member shall continue to perform or fund any unfinished PP on which it is performing until completion pursuant to the specific terms and schedule in the PA, or until the Government, the Consortium and the PAH come to an agreement to terminate the PA, whichever is first.

**No Refund.** A NASC Member that withdraws, voluntarily or involuntarily, from the Consortium will not receive a refund of any part of its dues paid for the relevant year.

## **ARTICLE VI     DISPUTES PROCEDURE**

The Members recognize that disputes may arise during the term of this Agreement which relate to a Member's rights and/or obligations hereunder. It is the objective of the Members to resolve disputes arising under this Agreement in an expedient manner, by mutual cooperation and without resort to litigation. To accomplish this objective, the Members agree to follow the procedures set forth in this Article if and when a dispute arises under this Agreement. However, if an organization provides evidence that it is prohibited by law from entering into binding arbitration, these dispute resolution procedures will be negotiated between the organization and the NASC and modified on a case-by-case basis.

**General.** NASC Members shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Agreement. Any disagreement, claim or dispute between the Lead Member and another NASC Member, or between NASC Members other than the Lead Member, arising from, or in connection with, activities under this Agreement shall be handled pursuant to the dispute resolution procedures set out below.

**Dispute Resolution Representatives.** In the event of a dispute that remains unresolved after discussion, a Member may, by written notice to the other Party (whether the Lead Member or another Member), refer the dispute to their respective executive officers designated below, for attempted resolution by good-faith negotiations within fourteen (14) days after such notice is received. Said designated officers are as follows:

- For the Member: Designated Senior Executive
- For the NASC: Lead Member General Counsel and Chief Compliance Officer

In the event the designated officers are not able to resolve such dispute, either Member may at any time after the fourteen (14)-day period invoke the provisions of the Alternative Dispute Resolution and Arbitration procedures set out below.

**Alternative Dispute Resolution.** Following settlement efforts pursuant to the procedures in this Agreement, any dispute, controversy or claim arising out of or relating to the validity, construction, enforceability or performance of this Agreement, including disputes relating to alleged breach or to termination of this Agreement, shall be settled by binding Alternative Dispute Resolution ("ADR") in the manner described below:

- ADR Request: If a Member intends to begin an ADR to resolve a dispute, such Member shall provide written notice (the "ADR Request") to the other Member informing such other Member of such intention and the issues to be resolved.
- Additional Issues: Within ten (10) business days after the receipt of the ADR Request, the other Member may, by written notice to the Member initiating ADR, add additional issues to be resolved. The Parties shall then initiate Arbitration pursuant to the below process.
- No ADR of Intellectual Property or Patent Issues: Disputes regarding the ownership of, and/or rights to Intellectual Property, including the scope, validity and enforceability of patents, shall not be subject to the ADR provision in this Article but rather submitted to a court of competent jurisdiction.

**Arbitration Procedure.** Any dispute or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration shall be conducted by three (3) arbitrators having experience with the issue under consideration, one (1) each to be appointed by the Members participating in the dispute and a third being nominated by the two (2) arbitrators so selected or, if they cannot agree on a third arbitrator, by the American Arbitration Association in accordance with its applicable rules. Such arbitration will take place at a location agreeable to the Members who are parties to the dispute. If no agreement as to venue is reached within fifteen (15) business days of written notice that a Member seeks arbitration of a dispute, the arbitration shall take place in Washington, DC. Judgment on any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Members agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrators shall have no authority to award punitive or exemplary damages against any Member. Nothing in this Article shall limit a Member’s right to seek injunctive relief in a court of competent jurisdiction with respect to a breach or threatened breach of this Agreement.

**ARTICLE VII    TECHNOLOGY AND INFORMATION SHARING**

During the term of this Agreement, the Members of the NASC agree that they may exchange confidential or proprietary information (“Confidential Information”) with Members having a need to know, for the purpose of furthering the goals of the NASC as defined in this Agreement. Confidential Information is defined as all confidential and proprietary information disclosed by a Member to another Member or other Members including, without limitation, information regarding existing and future technical, business and marketing plans and product strategies; cost and pricing information; employees’ names, titles, job descriptions and salaries; business practices, policies, methodologies and procedures;

proprietary data, data models, product designs, capabilities, specifications, program code, and software systems and processes; samples and devices; demonstrations; and/or other proprietary and/or competition sensitive information. Confidential Information also may include the identity of and the confidential and/or proprietary information of a Member's subsidiaries, affiliated companies, business partners, customers, potential customers and suppliers.

Each Member agrees to keep in confidence and prevent the use (except for the purposes of this Agreement) or the disclosure to any person or persons outside the receiving Member's organization, and limit the disclosure inside its organization to employees having a need-to-know, of all Confidential Information received under this Agreement (provided such Confidential Information is marked with a confidential or proprietary legend by the disclosing Member). The Members shall take every reasonable effort to keep properly marked "Confidential Information" confidential. In order to be protected hereunder, data which are (i) in written form shall be clearly labeled as confidential or proprietary and receiving Members shall have no obligation regarding information which is not so labeled, and (ii) first disclosed orally or by demonstration must be identified as proprietary or confidential at the time of disclosure, and shall be reduced to writing or other tangible form, and marked as "Confidential Information," within thirty (30) days after such disclosure or demonstration. All protection and restrictions as to use and disclosure shall apply during such thirty (30)-day period. Any markings, stamps or legends identifying proprietary or confidential information hereunder shall not impose any obligations on another Member inconsistent with this Agreement.

Notwithstanding the foregoing, each receiving Member understands that the disclosing Member and its affiliates are actively engaged in activities, investment, technology exploitation and research and development efforts (collectively, the "Business Activities"), and that Confidential Information disclosed to the receiving Members may include, without limitation, descriptions of ideas, works in progress and projects in development that may be similar to or coincident with such Business Activities. Each Member further acknowledges that such Business Activities may have originated with the disclosing Member's employees (or those of its affiliates) or others and may duplicate, parallel or resemble portions of the Confidential Information. The Members agree that this Agreement shall in no way limit, restrict or preclude any Member from pursuing any of its present or future Business Activities or interests, either alone or in conjunction with others, or from entering into any agreement or transaction of any kind with any other person, regardless of whether the subject matter of any such agreement or transaction involves elements similar to or coincident with Confidential Information exchanged hereunder or is in any other way similar to or coincident with any transaction considered or evaluated by the Members.

The above restrictions on use and disclosure of properly marked Confidential Information shall not apply to such data if the same:

- a. Are in the public domain or in the possession of the receiving Member without restriction at the time of receipt under this Agreement;
- b. Are used or disclosed with prior written approval of the disclosing Member;
- c. Are used or disclosed after ten (10) years from the date of first receipt under this Agreement;
- d. Are developed independently by the receiving Member;
- e. Have been received by the receiving Member from a third party without breach of this Agreement or other wrongful act of the receiving Member;
- f. Are made available by the disclosing Member to a third party, except to the Government, on an unrestricted, non-confidential basis; and
- g. Were known and can be shown by clear and convincing evidence to have been known by the

receiving Member at the time of its disclosure by the disclosing Member.

In addition, each Member understands and agrees that all information, ideas, suggestions and concepts of a general nature or commonly known in the industry shall not be deemed included in the Confidential Information of any Member, and no Member shall be under any obligation to any other Member with respect to its own use thereof.

In the event a receiving Member is required to disclose a disclosing Member's properly marked Confidential Information pursuant to a final binding order of a governmental agency or court of competent jurisdiction, the receiving Member shall give the disclosing Member reasonable notice of the pendency of such an order. Additionally, in the event that one Member is requested or required to disclose any of the Confidential Information in an investigatory, legal, regulatory or administrative proceeding, such Member will provide the disclosing Member with prompt notice thereof so that such other Member may seek a protective order or other appropriate remedy. However, if no such order or remedy is obtained, such Member may, without liability hereunder, disclose in such proceeding that portion of the Confidential Information that its legal counsel has advised it is legally required to disclose.

#### **ARTICLE VIII INTELLECTUAL PROPERTY HANDLING**

Rights to Intellectual Property, including but not limited to patent and data rights, and limitations thereto, will be negotiated between the Government and the NASC Member on a project-by-project basis, and such rights will be treated in accordance with the applicable negotiated PPA.

Regarding NASC Members entering into individual Member-to-Member agreements, Intellectual Property shall be treated in accordance with the rights negotiated by the individual Members. Neither NASC nor the Lead Member will receive any rights to any NASC Member's Intellectual Property.

#### **ARTICLE IX PAYMENT OBLIGATIONS**

**Dues.** As a condition of membership in the Consortium, all Members are required to pay Five Hundred Dollars (\$500.00) annual membership dues. These dues are waived for all new members in their first year. Dues for universities, colleges and other educational institutions are waived in perpetuity. Following enrollment, NASC Members will be billed annually with payment due on the anniversary date of their membership.

**Administrative and Management Fee.** To support Consortium operations, an administrative and management fee will be provided by each PAH to the Lead Member. This fee is expressed as a percentage of each PA as set out in the OT Agreement. No further fees are assessed.

The administrative and management fee will be included in each payable milestone invoice the PAH submits to NAWCAD through Wide Area Workflow ("WAWF"), as established in the OT Agreement. Upon receipt by the PAH of the milestone invoice amount from the Defense Finance and Accounting Services ("DFAS"), the PAH shall pay the applicable administrative and management fee to the Lead Member within ten (10) business days. The Lead Member reserves the right to impose a one-and-a-half percent (1.5%) monthly late payment charge on any unpaid balances that extend beyond the required payment period.

**ARTICLE X      DISCLOSURE**

**Disclosure/Public Announcements.** Any announcements, press releases or similar publicity (collectively “Announcements”) with respect to the execution of the OT Agreement and this Agreement or any provision herein shall be submitted to, and agreed upon, by the Lead Member in advance of such Announcement. Notwithstanding the foregoing allowance for Announcements, the Consortium Members agree that the terms of this Agreement shall be maintained in confidence by all Members, except that a Member may disclose the terms hereof to the extent required by law, provided that, to the extent legally permissible, such disclosure shall be in the form of a redacted Agreement to be agreed upon with the Lead Member.

**ARTICLE XI      GENERAL**

**Information Subject to Export Control Laws.** NASC Members shall comply with U.S. export statutes and regulations including, but not limited to, the requirements of the Arms Export Control Act (“AECA”), 22 U.S.C. §§ 2751-2794, the International Traffic in Arms Regulation (“ITAR”), 22 C.F.R. § 120 et seq., and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the NASC Member shall not export, directly or indirectly, any products or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. export statutes or regulations.

**Representations and Warranties of All Parties.** Each NASC Member represents and warrants individually that (i) it is free to enter into this Agreement; (ii) in so doing, it will not violate any other agreement to which it is a party; and (iii) it has taken all action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations thereunder.

**Limitations.** Except as expressly provided herein, no NASC Member makes any warranty, express or implied, either in fact or by operation of law, by statute or otherwise, relating to (i) any research conducted under this Agreement, or (ii) any invention conceived and/or reduced to practice under this Agreement, or (3) any other intellectual property developed under this Agreement, and each specifically disclaims any implied warranty of merchantability or warranty of fitness for a particular purpose.

**Waiver and Limitation of Liability.** NASC Members waive all claims against the Consortium and other NASC Members, and their directors, officers, employees, agents and affiliated entities based on alleged damages relating to or arising out of activities undertaken pursuant to this Agreement. Notwithstanding the foregoing, this waiver shall not apply to claims relating to confidential information as set forth in Article VII and for breach of this Agreement.

In no event will the Consortium or any NASC Member be liable for any consequential, punitive, special, indirect or incidental damages, arising in any way out of this Agreement, however caused and on any theory of liability. This limitation will apply whether or not notice was given of the possibility of such damage. Notwithstanding the foregoing, claims for contribution toward third-party injury, damage or loss are not limited, waived, released or disclaimed.

Notwithstanding the foregoing, this Waiver and Limitation of Liability shall not be applicable to:

- (a) Claims between a NASC Member and its affiliated entities;
- (b) Claims made by a natural person, his/her estate, survivors or subrogates for injury or death of such natural person;
- (c) Claims for damage caused by intentional, willful or gross misconduct; and
- (d) Intellectual property claims.

**Independent Contractors.** The relationship of the NASC Members established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any of the signatories hereto the power to direct or control the day-to-day activities of another signatory hereto, (ii) constitute a partnership, joint venture or co-owner status, or (iii) allow any of the signatories hereto to create, discharge or assume any obligation on behalf of another signatory hereto for any purpose whatsoever.

**No Small Business Affiliation.** Each NASC Member is independent of the other Members in the NASC, and there is no affiliation between or among NASC Members within the definition of 13 C.F.R. § 121.103 of the Federal small business regulations, and no such affiliation is intended either by the formation or implementation of the Consortium. Small businesses are solely members of the Consortium with no ownership rights in the Consortium.

**Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the NASC Members, and their respective successors, assigns, legal representatives and heirs.

**Assignment.** The rights and obligations of this Agreement may not be assigned or transferred by a NASC Member without the prior written consent of the Lead Member; provided, however, that a NASC Member may assign its rights and delegate its obligations (i) to any Affiliate of such Member (although, in the event of any such assignment and delegation, the assigning Member shall remain primarily liable for its obligations hereunder), and (ii) to a purchaser of all or substantially all of the business of such Member to which this Agreement relates by merger, sale of assets or otherwise. If the NASC Member, after the assignment or purchase, cannot meet the requirements for membership as set forth herein, the Member will be considered to have voluntarily withdrawn from the Consortium.

**Entire Agreement.** This Agreement constitutes the entire agreement between and among the NASC Members relating to the subject matter hereof.

**Notices.** Any notice or other communication required or permitted under this Agreement shall be in writing and (i) personally delivered, (ii) mailed, postage prepaid, first-class, certified mail, return receipt requested, (iii) sent, shipping prepaid, return receipt requested by national overnight courier service, or (iv) sent by electronic mail. Any notice or other communication given by personal delivery shall be deemed given on the date personally delivered; any notice or other communication given by mail shall be deemed given five (5) days after the date deposited in the United States mail; any notice or other communication given by national overnight courier service shall be deemed given on the next business day after being sent; and any notice given by electronic mail shall be deemed given on the day sent.



All Notices to be submitted to the Lead Member shall be delivered to the Chairman and Chief Executive Officer of CMG. Contact information is provided as follows:

Charlie McBride, Chairman/CEO  
Consortium Management Group, Inc.  
1025 Connecticut Avenue, N.W., Suite 904  
Washington, DC 20036  
202-466-4211  
mcbride@cmgcorp.org

**Amendment.** This Agreement may only be amended by the Lead Member.

**Waiver.** No waiver of any rights shall be effective unless assented to in writing, and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default.

**Section Headings.** The headings of the several sections of this Agreement are intended for reference only and are not intended to be a part of, or to affect the meaning or interpretation, of this Agreement.

**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; provided that no such severance of any provision shall be effective if the result of such materially changes the intended purposes of this Agreement.

**Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All Consortium Members shall receive a copy of the executed Agreement and any amendments thereto with the Lead Member retaining the originals.

**No Third-Party Beneficiary Rights.** NASC Members agree and acknowledge that it is their intent that the Government not be a third-party beneficiary of this Agreement, which is intended exclusively as an agreement between, among, and for the benefit of the NASC Members.

**Force Majeure.** No failure or omission by the NASC Members in the performance of any obligation of this Agreement shall be deemed a material breach or create any liability if the same shall arise from any cause or causes beyond their control, including, but not limited to, the following: acts of God; acts or omissions of any government; any rules, regulations or orders issued by any governmental authority or by any officer, department, agency or instrumentality thereof; 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 after the occurrence of one or more of the above-mentioned causes.

**Order of Precedence.** In the event of any inconsistency between the terms of this Agreement and the terms set forth in the OT Agreement or in a PA, the inconsistency shall be resolved by giving precedence

in the following order: (i) the OT Agreement; (ii) attachments to the OT Agreement; (iii) Project documentation, including the PA and the PAH's proposal selected for funding by NAWCAD; and (iv) this CMA. However, specifically negotiated PA terms and conditions will govern over the general terms of the OT Agreement.

**Business Development.** The Lead Member intends to engage in business development activity on behalf of NASC Members. The purpose of business development is to expand the Consortium's visibility and availability to other government agencies and to other DoD components and to expand membership in the Consortium of traditional contractors, NDCs, nonprofit organizations and academic institutions.

**Right to Develop Independently.** Nothing in this Agreement will impair any NASC Member'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 and technology that is the subject of the OT Agreement's Technology Areas.

**Controlling Nature of OT Agreement.** By executing this Agreement, the NASC Member acknowledges that it has read and understands the OT Agreement. The NASC Member also recognizes that the terms of the OT Agreement control the project award process and will apply to all awarded prototype projects. The NASC Member therefore agrees to be bound by all applicable terms and provisions of the OT Agreement, as it may be amended by the parties thereto.

**Choice of Law.** This Agreement is governed by and shall be construed in accordance with the laws of the District of Columbia. Notwithstanding the foregoing, the OT Agreement is governed by Federal law, including applicable Federal statutes and regulations. As such, the provisions of this Agreement derived from the OT Agreement are governed by Federal law.

**Term.** This Agreement shall continue in force for a period of five (5) years from the Effective Date of this Agreement, and may be extended through a written modification issued by the Lead Member within one hundred (100) days after the expiration or termination of the OT Agreement.



**IN WITNESS WHEREOF**, this Agreement is executed by duly authorized representatives as of the day and year set forth below.

**Consortium Management Group, Inc.**

By: 

Name: Charlie McBride

Title: Chairman and Chief Executive Officer, Consortium Management Group, Inc.

Date: June 10, 2019