



BASE TASK ORDER AGREEMENT

Between

ADVANCED TECHNOLOGY INTERNATIONAL (ATI),

NSRP Program Administrator
315 SIGMA DRIVE
SUMMERVILLE SC 29486-7790

and

Recipient Name
Recipient ADDRESS

National Shipbuilding Research Program (NSRP) Base Task Order Agreement No.: 20XX-XXX
Authority: Other Transaction Agreement (OTA) No. N00024-18-3-2231 and pursuant to 10 U.S.C. § 2371

This Agreement is entered into between the Advanced Technology International, hereinafter referred to as the "Program Administrator," and the NSRP Recipient Name, hereinafter referred to as the "Recipient." This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and agreements. It shall not be varied except by an instrument in writing of subsequent date duly executed by an authorized representative of each of the parties. The validity, construction, scope and performance of this Agreement shall be governed by the laws of the state of South Carolina, excluding its choice of laws rules.

This Agreement is based on the authority of 10 U.S.C. § 2371 for research other than grants guided by the applicable provisions of the Department of Defense Grants and Agreements Regulations (DoDGAR) and 32 CFR Part 37. This Agreement is not a procurement contract or grant agreement for purposes of FAR Subpart 31.205-18 or for any other purpose. The Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) apply only as specifically referenced herein.

ADVANCED TECHNOLOGY INTERNATIONAL

NSRP Recipient Name

(Name & Title)

(Name & Title)

(Signature)

(Signature)

(Date)

(Date)

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

The National Shipbuilding Research Program - Advanced Shipbuilding Enterprise (NSRP ASE) program is a follow-on research initiative to the National Shipbuilding Research Program (NSRP) and the Maritime Technology (MARITECH) program. The NSRP was a NAVSEA-administered program to assist the United States shipbuilding and repair industry in achieving and maintaining global competitiveness. The MARITECH program, administered by the Defense Advanced Research Projects Agency (DARPA), was established to foster continuous product and process improvements in ship design, construction, and repair processes necessary for the U.S. shipbuilding industry to become internationally competitive.

Prior to award of the predecessor Joint Funding Agreement (JFA) in 1999, a five-year Strategic Investment Plan (SIP) was developed for NSRP ASE by a collaboration of U.S. shipbuilders in conjunction with the NAVSEA, industry and academia (see Article I.B. definitions). The SIP identified the critical technology initiatives needed to drastically improve the U.S. shipbuilding competitiveness and reduce the cost of ships to the U.S. Navy. Further, the SIP formed the framework of major initiative areas and supporting panel structure to begin a continuous cycle of industry-wide planning and reinvestment. The original major initiative areas selected as the framework for R&D investment were: Business Process Technologies; Ship Design & Materials Technologies; Systems Technology; Shipyard Production Process Technologies; Facilities & Tooling; and Crosscut Initiatives. Those major initiatives have since evolved to: Business Processes & Information Technologies, Ship Design & Material Technologies, Ship Production Technologies, and Infrastructure & Support.

The program goals and objectives are essentially unchanged: reduce the cost of building and maintaining ships to the U.S. Navy and other National Security customers and improve U.S. shipbuilding technical and business practices and processes using focused research and development. NSRP ASE is structured as a collaboration of major U.S. shipyards focused on industry-wide implementation of solutions to common cost drivers. The program targets solutions to consensus priority issues that exhibit a compelling business case to improve the efficiency of the U.S. shipbuilding and ship repair industry. Solutions include both leverage of best commercial practices and creation of industry-specific initiatives. Technology transfer to and “buy-in” by multiple U.S. shipyards are requirements of all funded efforts.

The Joint Funding Agreement between the NAVSEA and the ECB, representing the signing members of the Collaboration, sets out the terms and conditions for cost sharing between the parties in executing the Strategic Investment Plan (SIP) initiatives and the research management strategy. Funding will be distributed to the NSRP ASE collaboration and in turn distributed to research projects under the management of a Program Administrator. Projects will be awarded based on factors detailed in relevant source selection documents, including but not limited to technical merit, fit with the Technology Investment Plan and the offeror's willingness to share cost. This sharing of cost leverages the total funds available for research projects and ensures the commitment of the firm submitting the proposal. The Navy's aim is to encourage the NSRP Executive Control Board to work with the shipbuilding and ship repair industry, technology providers, Government and academic communities, small businesses, and not-for-profit organizations in the continuing effort to achieve program goals.

This Base Task Order Agreement flows down the required terms and conditions applicable to Projects selected for funding under the Joint Funding Agreement. Advanced Technology International will issue all Projects selected for funding through issuance of a Task Order under the term and conditions of this Base Task Order Agreement. Task Orders for work other than Projects but contemplated under the JFA may also be issued under this Base Task Order Agreement.

B. Definitions

As used throughout this Agreement, the following terms shall have the meanings provided below:

"NAVSEA" means the Naval Sea Systems Command, which is the lead Government organization in charge of executing the National Shipbuilding Research Program.

"Executive Control Board (ECB)" means the Executive Control Board of the National Shipbuilding Research Program. The ECB is composed of one Voting Representative from each of the shipyards identified in Article IIIA.

"Program Administrator" means Advanced Technology International

"Agreements Officer (AO)" means the NAVSEA 02 warranted Contracting Officer authorized to sign the final Agreement for the Government, or a properly designated Agreement Administration Officer.

"Collaboration" means the shipyards that have executed the Articles of Collaboration.

"Collaboration Members" means each of the shipyards identified in the Articles of Collaboration.

"Party" means an individual Recipient or the Program Administrator.

"Parties" means collectively the Program Administrator and the Recipient. In some references this also includes the Government and the NSRP Collaboration Members.

"Project" means the overall effort to be funded by each Task Order, which is described in the Statement of Work appended to each Task Order as Attachment 1.

"Program" means the NSRP Program.

"Program Participant or Program Participants" means Collaboration members, other industry Primes, or team members that participate on projects funded under this program.

"Articles of Collaboration (AoC)" means the "Articles of Collaboration for the National Shipbuilding Research Program" document that is in effect on the date this Agreement is executed by each of the shipyards that authorizes the ECB, or its designee, as its agent to enter into the Joint Funding Agreement.

"National Security Customers" means other federal customers to include US Coast Guard, Military Sealift Command, Maritime Administration, and potentially others.

"Recipient" means the Program Participant, which has entered into this Base Task Order Agreement with the Program Administrator.

"Research and Development" means systematic activity combining both basic and applied research, and aimed at discovering solutions to problems or creating new products and knowledge.

C. Scope

The Recipient shall perform coordinated research and development programs designed to develop NSRP ASE. The research shall be carried out in accordance with the Statement of Work incorporated in each Task Order issued under this Agreement.

Program Administrator and the Recipient owe a duty of good faith and best efforts to achieve the objectives of this Agreement. This Agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

1. The purpose of this Agreement is to execute coordinated research and development designed to rapidly transition new technologies into shipbuilding and repair processes and ship/submarine platforms.
2. The research shall be carried out in accordance with the Articles of Collaboration for NSRP ECB member shipyards, the terms and conditions contained in this Base Agreement and any subsequent Task Order, corresponding goals and objectives presented herein, and the Statement of Work of each Task Order.
3. The overall execution of each Task Order, including technical, programmatic, reporting, financial and administrative matters, of the coordinated research projects established under this Agreement shall be accomplished by the Recipient. The Recipient shall submit all financial documentation and technical reports as required by each individual Task Order.

The Recipient shall be paid in accordance with the provisions of Article V of this Agreement.

D. Goals/Objectives

The program goals and objectives include: 1) to reduce the cost of building and maintaining ships to the U.S. Navy and other National Security customers, and 2) to improve U.S. shipbuilding technical and business practices and processes using focused research and development. NSRP ASE is structured as a collaboration of major U.S. shipyards focused on industry-wide implementation of solutions to common cost drivers. The program targets solutions to consensus priority issues that exhibit a compelling business case to improve the efficiency of the U.S. shipbuilding and ship repair Industry. Solutions include leveraging new technology, and commercial best practices, as well as creation of industry-specific and Navy special interest initiatives. Technology transfer to, and buy-in by, multiple U.S. shipyards are requirements of all funded efforts.

The Government will obtain access to research results and certain rights in data and patents pursuant to Articles VIII and IX.

ARTICLE II: TERM

A. The Term of this Agreement

The Program commences upon the date of execution through 01 March 2023. If at any time funds expended exceed individual Task Order amounts prior to the expiration of each individual Task Order term, the Parties shall have no obligation to continue performance and may elect to cease development at that point. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

The term of the Task Order will be as stated in the terms and conditions of each individual Task Order.

B. Termination Provisions

Subject to a reasonable determination that a project will not produce beneficial results commensurate with the expenditure of resources, or the Project does not address the objectives set forth in Article I, either Party may terminate an individual Task Order or this entire Agreement by 60 days written notice to the other Party, provided that such written notice is preceded by consultation between the Parties. The Program Administrator shall not terminate an individual Task Order or this entire Agreement without the consent of the ECB. In the event of a termination of the Agreement, it is agreed that disposition of Data developed under this Agreement, shall be in accordance with the provisions set forth in Article IX, Data Rights.

C. Stop Work Order

Program Administrator may, at any time, by written order to Recipient require Recipient to stop all, or any part, of the work called for by this Agreement for a period of 90 days after the order is delivered to Recipient, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Clause. Upon receipt of the order, Recipient shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to Recipient, or within any extension of that period to which the parties shall have agreed, Program Administrator shall either-

- a. Cancel the stop-work order; or
- b. Terminate the work covered by the order as provided in the termination clause of this Agreement.

ARTICLE III: MANAGEMENT OF THE PROJECT

A. Reserved

B. Reserved

C. Management and Program Structure

Technical and program management of the coordinated research program established under this Agreement shall be accomplished through the management structures and processes detailed in this Article and in relevant program documents.

The ECB will actively manage program structure and administration in order to maximize funds available for investment in research. The ECB has selected the Program Administrator who, acting with guidance from the Parties, shall be responsible for the overall management of the Recipient, including technical, programmatic, reporting, financial and administrative matters. The Program Administrator employs the Executive Director for the program who will provide a single impartial point of contact to the Program Participants, the Government, and the respective designees.

The Program Administrator is responsible for establishing a schedule of regular technical meetings, to be held on a quarterly basis. The Program Administrator shall notify all Program Participants of the established meeting schedule and, in the event of changes to this schedule, shall provide all Program Participants with reasonable notice prior to the next scheduled meeting.

The NSRP is managed by a collaboration of shipyards. The ECB has appointed an Executive Director to manage the Program's operation, and approved Major Initiative Teams to ensure progress in each technology area specified in the Strategic Investment Plan. For management of individual projects on behalf of the Program, Program Technical Representatives (PTRs) are designated as the technical voice of the Program in dealing with each project. The PTRs are selected from the industry and while not employees of Program Administrator, are responsible and accountable to the Executive Director for all aspects of the PTR role. The PTRs report directly to the Program Technical Director (a Program Administrator employee on the Executive Director's staff) and work with the Program Administrator's Contract Representative in overall project management and oversight. This is a unique arrangement based on the NAVSEA-sponsored, industry-managed Program. It is important to note that while the PTR is an agent of the Program and will work closely with the Recipient and Program Administrator's Contract Representative, he or she has no authority to modify any provisions in a Project or in this Agreement. This authority rests solely with the Program Administrator's Contract Representative.

D. Program Management Planning Process

Program documents referenced herein and specified in the Statement of Work of each Task Order provide a detailed research management process, a notional schedule of recurring research activities, include forecasted expenditures, describe the research investment initiatives, and commit the Recipient to use its best efforts to meet specific performance objectives.

The program management and planning process shall be subject to periodic reviews with inputs and review from the ECB, Program Administrator, and PTR (if applicable). Recommendations for changes, revisions or modifications to the Agreement which result from the review shall be made in accordance with the provisions of Article III, Section E.

E. Modifications

As a result of quarterly meetings, end of program reviews, or at any time during the term of a Project under this Agreement, research progress or results may indicate that a change in any of the subsequent Task Order Statements of Work or Term would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to any of the subsequent Task Order Statements of Work, will be documented in a letter and submitted by the Recipient to the Program Administrator with a copy to the PTR (if applicable). This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. The Program Administrator and the ECB shall approve any Agreement modification.

The Program Administrator shall be responsible for the review and verification of any recommendations to revise or otherwise modify any of the subsequent Task Order Statements of Work or other proposed changes to the terms and conditions of each Task Order.

For minor or administrative Agreement modifications (e.g., changes in the paying office or appropriation data, changes to Recipient representatives identified in the Agreement, etc.) no signature is required by the Recipient.

F. Research and Development Projects and Process

Expenditure-Based and Fixed-Support Project Awards

The majority of projects are anticipated to be Expenditure Based awards. Use of Fixed-Support awards or hybrids is allowed, but is anticipated to be limited, given that the majority of Program Participants

consistently perform under reimbursable contract types with the Government and the majority of the research and development scope of work lends itself to expenditure-based. Use of Fixed-Support awards is subject to periodic review by the Government or the Program Administrator and the Program Administrator’s Director of Contracts given the statutory cost share requirement.

Pre-Award Business Evaluation

The Recipient subawards to other Program Participants under a Project, shall conduct a pre-award Business Evaluation of project proposals to include:

1. A determination that the Recipient is qualified
2. A determination that the project funding is fair and reasonable
3. A determination regarding the value and reasonableness of the Program Participants’ cost sharing contribution
 - a. Criteria used in deciding whether to accept a recipient's cost sharing
 - b. How to value cost sharing related to real property or equipment
 - c. The depreciation status of real property or equipment and acceptability as cost share
 - d. Acceptability of costs of prior research as cost share
 - e. Acceptability of intellectual property as cost share
 - f. How to value a Program Participant’s other contributions
4. A determination of Fixed-Support, Expenditure-Based, or Hybrid Approach
5. Method for Accounting, Payments, and Recovery of Funds

ARTICLE IV: AGREEMENT ADMINISTRATION

Administrative and Agreement matters under this Agreement shall be referred to the following representatives of the parties:

(a) Program Administrator representatives are:

Name	Title	Phone	Email
Chad Bryant	Technical Director		chad.bryant@ati.org
Scott Leacock	Contracts Administrator		scott.leacock@ati.org

(b) Recipient representatives are:

Name	Title	Phone	Email

Each party may change its representatives named in this Article by written notification to the other party.

ARTICLE V: OBLIGATION, BUSINESS SYSTEMS, ALLOWABLE COSTS AND PAYMENT

A. Obligation

The Program Administrator’s liability to make payments to the Recipient is limited to only those funds obligated under each individual Task Order. Program Administrator may incrementally fund each Task Order.

B. Business Systems, Allowable Costs & Payments

In addition to any other financial reports provided or required, the Recipient shall notify the Program Administrator immediately if any contribution from the Recipient is not made, as required.

Business System Requirements and Cost Principles: Prior to the submission of invoices to the Program Administrator, the Recipient shall have and maintain an established accounting system that complies with Generally Accepted Accounting Principles and the requirements of this Agreement. The Recipient shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. Program Participants shall also have and maintain an established financial management and cost-accounting system. Program Participants that perform under expenditure-based Federal procurement contracts shall apply the Government cost principles in 48 CFR parts 31 and 231. For-profit Program Participants that do not currently perform under expenditure based Federal procurement contracts shall comply with Generally Accepted Accounting Principles, 32 CFR 34.11 and the requirements of this Agreement. Non-profit Program Participants shall have and maintain an established accounting system which complies with 32 CFR 37 consistent with the applicable type of non-profit. Allowable costs for non-profits shall comply with the relevant OMB circular (21, 87 or 122) based upon the type of non-profit (i.e., State or Local Government, Institution of Higher Education, or Other type). Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.

Purchasing System: The Recipient shall make awards consistent with their existing purchasing system. Any awards shall ensure the flow down of applicable requirements of this Agreement.

Funding: The Recipient shall maintain visibility and traceability of Federal funds obligated and the performance period for those obligated funds by appropriation type.

Payment Terms: Payment terms are NET 30 days after Program Administrator's receipt of an acceptable invoice. An acceptable invoice is one that meets the conditions described in the Payment Method Types section below.

Payment Method Types: The Recipient may be selected for either a fixed price milestone payment method, a cost reimbursement milestone payment method, or an expenditure based (non-milestone) with a not to exceed ceiling as described below.

A. Fixed Support Milestone Payment Method: Payments shall be made in accordance with the Schedule of Payments and Payable Milestones, provided the designated PTR has verified compliance with the Statement of Work and accomplishment of the stated effort. An acceptable invoice for fixed price milestone payments is one that (Payable Milestones on each individual Task Order Attachment 3):

- contains the date of invoice and agreement number;
- identifies any associated technical milestones and the progress toward completion of each milestone;
- lists the milestone cost negotiated and contained in Attachment 3; and
- includes a discussion of the cost share expended towards the accomplishment of associated milestone (this cost share discussion may be attached to the invoice if contractor practices make inclusion of such information on the invoice itself impractical).

B. Expenditure Based Milestone Payment Method (with not to exceed ceiling): Payment is contingent upon satisfactory progress toward completion of milestones as delineated in each individual Task Order as Attachment 3. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under this Agreement, provided the designated PTR (if applicable) has verified compliance with the Statement of Work and accomplishment of the stated effort. The Recipient will normally fund any costs incurred above this maximum amount. Either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report required by each individual Task Order Attachment 2):

- contains the date of invoice and agreement number;
- identifies any associated technical milestones and the progress toward completion of each milestone;
- includes a discussion of the cost share expended towards the accomplishment of the tasks and/or milestone (this cost share discussion may be attached to the invoice if contractor practices make inclusion of such information on the invoice itself impractical);
- includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, and extended totals; and
- indicates the current period and cumulative manhours and costs incurred through the period indicated on the invoice.
- contains the following certification statement:

“I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received.”

Authorized Signature _____

C. Expenditure Based (Non-Milestone) with a not to exceed ceiling: Program Participant's invoices shall contain the following information, as applicable: date of invoice, period covered by invoice, subcontract number, subcontract line item numbers as applicable, co costs by cost element, and a brief description of the work performed for the period.

Invoices shall indicate the monthly and cumulative man-hours and a breakout of costs by cost element expended through the period indicated on the invoice.

Invoices that include charges for travel, subsistence, and lodging shall be supported by a copy of the employee's travel expense report or other substantiating document. Travel expenses will be reimbursed using the following guidelines:

- Travel costs must be broken out by trip.
- All airfare must be coach class.
- Alcohol is an unallowable expense.
- As a goal, and whenever possible, lodging and meals and incidental expenses (MI&E) will be paid at Federal Travel Regulation rates (unless prior authorization is obtained from Contractor). Per diem rates can be found on the following website:

<http://www.gsa.gov/portal/content/104877>. All travel expenses will be reimbursed as incurred, provided they are reasonable and allocable to this effort.

- Invoices shall substantiate via receipts all expenses in excess of \$75.00, including airline tickets, lodging, meals, car rental, etc.

“I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received.”

Authorized Signature _____

Payment Method: Each Task Order shall identify the Payment Method for that Task Order.

Submission of Invoices: Invoices may be submitted no more frequently than monthly. The Recipient shall send the invoice electronically to Program Administrator at afgforms@ati.org.

As applicable, the designated PTR, within 10 working days after receipt of each status, deliverable, or milestone report, will either: (i) verify the accomplishment of the technical effort(s) and approve in writing (email is acceptable) the status, deliverable, or milestone report; or (ii) notify the Recipient of the reason for not signing off on the status, deliverable, or milestone report. The 10 days review by the PTR is part of the overall 30-day cycle for processing invoices described above under the heading Payment Terms. If the PTR is unavailable or fails to act as described above, Program Administrator will make the payment decision on the tenth day.

Payment approval for invoices will be made after reconciliation of Program Administrator funding with actual Recipient cost share contributions (if applicable).

The Recipient’s final invoice (completion invoice) will be clearly indicated as such and shall indicate the cumulative amounts (by cost element) incurred and billed to completion, and a written certification of the total hours expended. Actual project costs incurred and cost share performance (if applicable) of each Task Order shall be reported and reviewed each quarter.

Cost share at milestone payments: For each applicable Task Order, the project award document should indicate percentages of expected industry cost share at milestones and invoices should reflect actual cost share provided. That will help the Program Administrator decide when a project’s industry cost share expenditures have fallen too far below the original projections, requiring adjustments of future milestone payment amounts.

Final Payment for Projects: Submission and acceptance of Project Final Reports by the Program Administrator will be a pre-requisite for final payment to project Recipient.

Limitation of Funds: In no case shall the Program Administrator’s financial liability exceed the amount obligated under each Task Order and available for payment.

Indirect Costs: In accordance with the general policy in FAR Subpart 31.203, the Program Administrator will require a for-profit Recipient that has Federally-approved indirect cost rates for its Federal procurement contracts to use those rates to accumulate and report costs under an expenditure-based project awards. This includes both provisional and final rates that are approved up until the time that the awarded project is closed out. An exception from this requirement may be granted if there are programmatic or business reasons to do otherwise (e.g., the Recipient offers a lower rate). If an exception is granted, the Recipient must accumulate and report the costs using an accounting system and practices

that it uses for other customers (e.g., its commercial customers). The Program Administrator will document the reason for the exception in the award file.

Fee/Profit: As this is a cost-sharing Agreement, fee/profit on research is not necessary to achieve the objectives of NSRP. Payment of reasonable fee or profit when making purchases from suppliers of goods (e.g., supplies and equipment) or services needed to carry out the research, including Program Administrator costs, is allowable. With written approval from the Agreements Officer, fee may be allowable on sub-awards for non-substantive program performance.

Financial Records and Reports: The Recipient shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for Program Participants' funding provided under this Agreement. Information pertaining to the type and amounts of Program Participant cost share shall be included in the Quarterly Business Status Report. Upon completion or termination of each subsequent Task Order, whichever occurs earlier, the Recipient shall furnish to the Program Administrator a copy of the Final Report required by Attachment (2) of applicable Task Orders. Program Participant's relevant financial records are subject to examination or audit by the Program Administrator for a period not to exceed three (3) years after expiration of the term of each individual Task Order made under this Agreement.

The Program Administrator's approved designee shall have direct access to sufficient records and information of the Recipient to ensure full accountability for all funding under each subsequent Task Order. Such audit, examination, or access shall be performed during normal business hours on regular business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of the Program may be conducted by the Government at any time using Government auditors at the Government's expense.

If an audit request is originated by the Government and Government auditors are not required to be used, the Recipient has the option of hiring an external CPA firm at the expense of the Recipient.

If an audit request is originated by the Program Administrator, the Recipient may request the auditing body to be Government (if the Government and Program Administrator agree), the Program Administrator's approved designee (not at Recipient's expense), or has the option of hiring an external CPA firm. If Recipient elects to hire an external CPA firm, the audit will be at the expense of the Recipient.

ARTICLE VI: COST SHARING

A. Cost Share Goals

In order to meet the overall cost share goal contemplated by the Joint Funding Agreement, each Task Order shall specify the specific the applicable Project cost share requirement for that Task Order. Recipients will report, and the Program Administrator will track and report costs in accordance with each Task Order to facilitate monitoring of cost share accomplishments. For Projects that are not meeting cost share requirements, the Program Administrator may adjust future milestone payments amounts.

To the maximum extent practicable, Project Participant matching funds must come from non-federal sources and may be augmented by several narrow categories of federally-reimbursed costs as outlined in the below paragraph D. Acceptable Cost Share Origins are consistent with 32 CFR 37.530 and Cost Accounting Principles.

Quarterly and annual reports described in the each Task Order Statement of Work will closely monitor the share percentage and form the basis for evaluating these goals.

For cost sharing purposes, Recipients may include organizations outside the Collaboration members. It is understood that the exact share ratio at any point in time will fluctuate. In calculating the cost share ratio, both cash and in-kind cost share contributions shall be used as defined below.

Labor provided in support of research and technology transition that is not included should be reported and if from an acceptable source counted as Industry cost share. The amount of labor provided from sources that are not from an acceptable source will be reviewed periodically to determine if an adjustment in overall cost share requirement is appropriate. The Program Administrator shall establish a method to capture and report the labor and the cost share.

B. Cash Cost Share

The definition of cash cost share is outlays of funds to support program activities and projects consistent with the Statement of Work through acquiring material, buying equipment, paying labor (including benefits, direct overhead, and General and Administrative costs associated with that labor), and other cash outlays required to either perform Projects or to perform the Task Order Statement of Work. Independent Research and Development (IR&D) funds may be used as a source of cash when appropriate and relevant to the Project, even though they remain eligible for reimbursement by the Government. Similarly, Manufacturing and Production Engineering (M&PE) funds may be used if directly in support of the NSRP ASE program. Cash can be derived from any source of funds within the accounting system. Cash contributions may include revenues from any non-federal source, including non-federal contracts or grants, donations from state or local governments, or funds from venture capitalists. Costs of prior research shall not be counted toward the Collaboration cost share.

C. In-Kind Cost Share

1. In-kind Cost share is defined as the reasonable value of equipment, materials, or other property used in the performance of the Statement of Work. In-kind contributions are sometimes hard to value (such as space or use of equipment, and intellectual property). The in-kind value of equipment (including software) cannot exceed its fair market value **and** must be prorated according to the share of its total use dedicated to carrying out the project. The in-kind value of space (including land or buildings) cannot exceed its fair rental value and must be prorated according to the share of its total use dedicated to carrying out the project.
2. A general test for determining whether a cost qualifies and the amount to be considered for an in-kind transaction follows:
 - (a) Is the resource under the control of or used by a Program Participant in conducting project research? If so, does it actually help with the project; is it germane to the overall statement of work?
 - (b) Does the contribution represent a real loss of opportunity cost to the Program Participant, either now or in the future?
 - (c) What is the fair market value of the resource?

D. Acceptable Cost Share Origins

The matching fund sources defined in sections VI B and C may originate from a mix of federal and non-federal sources. To meet the goal of deriving these funds from non-federal sources to the maximum extent practicable, funds must be tracked and reported according to their origins as follows:

Acceptable cost share origins include private-sector funding of NSRP activities from commercial sources and several narrow categories of federally-reimbursed costs. These narrow categories of federally-reimbursed costs are being allowed as cost share as an incentive for industry to invest in these areas, and

include funding from accounting lines which would otherwise be profit (including firm fixed price contracts), and the fraction of project resources charged to indirect pools that are reimbursed with revenue from non-federal contracts. Origins include:

- Direct billing to any non-federal contract / customer
- Project resources billed to firm fixed price contracts with any customer (including the federal government)
- Profit
- A 'gross revenue fraction' of resource billing to indirect cost pools calculated as follows: At the start of each NSRP project phase, Program Participants calculate gross revenue percentages for their company (federal vs. non-federal revenue at the close of their most recent fiscal year). Throughout the ensuing phase, the Program Participant uses this fraction to estimate allocation of their cost match from indirect cost pools to Federal sources vs. non-Federal sources in quarterly project business status reports.
- Independent Research and Development (IR&D)
- The portion of Manufacturing and Production Engineering (M&PE) funding pools reimbursed from non-federal sources
- Intellectual property owned by the private sector

Contributions that are not specifically listed above require approval by the Program Manager and Agreements Officer before inclusion as part of the Project Participant's cost share.

ARTICLE VII: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

Any disagreement, claim or dispute between Program Administrator and the Recipient concerning questions of fact or law arising from or in connection with this Agreement or any subsequent Task Order, and, whether or not involving an alleged breach of this Agreement or any subsequent Task Order, may be raised only under this Article.

Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under this article constitute the basis for relief under this article unless the Director, Shipbuilding Contracts Division in the interest of justice waives this requirement.

Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate.

Within 10 working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the ECB. The other Party shall submit a written position on the matter(s) in dispute within 30 calendar days after being notified that a decision has been requested. The ECB will conduct a review of the matter(s) in dispute and render a decision in writing within 30 calendar days of receipt of

such position. Any such decision is final and binding. Each party will bear their own costs, risk, and liabilities relating to any dispute.

C. Limitation of Damages

Claims for damages of any nature whatsoever pursued under this Agreement or any subsequent Task Order shall be limited to direct damages only up to the aggregate amount of funding disbursed as of the time the dispute arises. In no event shall the Program Administrator, ECB, or Government be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages. The Recipient disclaims any liability for consequential, punitive, special and incidental damages or other indirect damages, except when such damages are caused by the willful misconduct of the Recipient personnel. In no event shall the liability of the Recipient or any other entity performing research activities under each Task Order, exceed the funding obligated by the Program Administrator under said Task Order.

ARTICLE VIII: PATENT RIGHTS

A. Definitions

"Invention" means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Made" when used in relation to any invention means the conception or first actual reduction to practice of the invention.

"Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention" means any invention of a Program Participant Made in the performance of work under this Agreement.

"Intellectual Property" means any inventions, ideas, concepts, creations, processes, mask works, works of authorship, software or other developments or improvements thereto, whether patentable, copyrightable or not. "Intellectual Property Rights" means any Rights in Intellectual Property including patents, copyrights, trade secrets and confidential information.

"NSRP Intellectual Property" means Intellectual Property developed or made by and in the course of identified tasks assigned to and performed by any Program Participant whether performed under Government funding or funding provided by a Party as agreed to as in-kind contribution in the Funding Agreement and/or in these Articles.

B. Allocation of Principal Rights

Unless the Recipient notifies the Program Administrator (in accordance with subparagraph C.2 below) that the Program Participant(s) does not intend to retain title, the Program Participant(s) shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of the ECB Articles of Collaboration (see Exhibit 1), this Article, and 35 U.S.C. § 202. With respect to any subject invention in which the Program Participant(s) retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world. The Recipient may elect to provide full or partial

rights that it has retained to Collaboration Members or other parties, but must notify the Program Administrator prior to doing so.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Recipient shall disclose each subject invention to the Program Administrator within two (2) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Program Administrator shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.
2. If the Recipient determines that it does not intend to retain title to any such invention, the Recipient shall notify the Program Administrator's Contract Representative, in writing, within six (6) months of disclosure to Program Administrator. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by Program Administrator to a date that is no more than fifty (50) calendar days prior to the end of the statutory period.
3. The Recipient shall file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Recipient may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. Requests for extension of the time for disclosure election, and filing under Article VIII, paragraph C, may, at the discretion of Program Administrator, and after considering the position of the Recipient, be granted.

D. Conditions When the Government May Obtain Title

Upon the NAVSEA Agreement Officer's written request to the Program Administrator, the Recipient shall convey title to any subject invention to the Government via the Program Administrator under any of the following conditions:

1. If the Recipient, via the Program Administrator fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the Recipient to disclose or elect within the specified times.
2. In those countries in which the Recipient fails to file patent applications within the times specified in paragraph C of this Article; provided, that if the Recipient has filed a patent application in a

country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by the Government, the Recipient shall continue to retain title in that country; or

3. In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

E. Minimum Rights to the Collaboration and Protection of the Collaboration's Right to File

1. The Recipient shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph C of this Article. The Recipient license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the Recipient within the corporate structure of which the Recipient is a member and includes the right to grant licenses of the same scope to the extent that the Recipient was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of NAVSEA, except when transferred to the successor of that part of the business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld.
2. The Recipient domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Recipient, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the Government shall furnish the Recipient via the Program Administrator a written notice of its intention to revoke or modify the license, and the Recipient shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. The Recipient agrees that the inventing Participant will execute or have executed and promptly deliver to the Program Administrator all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and (ii) convey title to the Government when requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.
2. The Recipient agrees to require, by written agreement, that employees of the Participants working on program projects, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format acceptable to the Program Administrator, each subject invention made under this Agreement and any subsequent Task Orders in order that the Recipient can comply with the disclosure provisions of paragraph C of this Article and to execute all papers necessary to file the patent applications on the subject invention and to establish the Government's rights in the subject invention. The Program Participants shall instruct their employees, through

employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The Recipient shall notify the Program Administrator of any Participant's decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.
4. The Program Participants shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under Agreement No. N00024-18-3-2231 awarded by the Naval Sea Systems Command (NAVSEA). The Government has certain rights in the invention."

G. Lower Tier Agreements

The Recipient shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.

H. Reporting on Utilization of Subject Inventions

The Recipient agrees to submit, during the term of the Task Order, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Program Participants, or their licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient or the Program Participants, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with paragraph J of this Article. Consistent with 35 U.S.C. § 205, the Government agrees it shall not disclose such information to persons outside the Government or the Program Administrator without permission of the Program Participants (inventor).

I. Preference for American Industry

Notwithstanding any other provision of this Article, the Recipient agrees that no Participants shall grant any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by the Government upon a showing by the Program Participant(s) that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

J. March-in Rights

The Recipient agrees that, with respect to any subject invention in which it has retained title, the Government has the right to require the Recipient, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

1. Such action is necessary because the Recipient or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (I) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

K. Survival Rights

Provisions of this Article shall survive termination of this Agreement under Article II.

L. Marking related to inventions

Program Participants are required to mark documents disclosing inventions it desires to protect by obtaining a patent with a legend identifying them as intellectual property subject to public release or public disclosure restrictions, as provided in 35 U.S.C. 205.

ARTICLE IX: DATA RIGHTS

A. Definitions

"Government purpose rights" as used in this Article is as defined in DFARS 252.227-7013 Rights in Technical Data-Noncommercial Items (Feb 2014) paragraph (a) (13) and DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014) paragraph (a) (12) as applicable.

"Unlimited rights" as used in this Article is as defined in DFARS 252.227-7013 Rights in Technical Data-Noncommercial Items (Feb 2014) paragraph (a) (16) and DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014) paragraph (a) (16) as applicable.

"Data" as used in this Agreement, means recorded information, regardless of the form or method of the recording, which includes, the items defined in DFARS 252.227-7013 Rights in Technical Data-Noncommercial Items (Feb 2014) (a)(1) to (a)(4), (a)(6), (a)(11) and (a)(15).

"Limited rights" as used in this Article is as defined in DFARS 252.227-7013 Rights in Technical Data-Noncommercial Items (Feb 2014) paragraph (a) (14).

"NSRP Intellectual Property" as used in this Article means Intellectual Property developed or made by and in the course of identified tasks assigned to and performed by any Program Participant whether performed under Government funding or funding provided by a Party as agreed to as in-kind contribution in the Funding Agreement and/or in these Articles.

"Restricted rights" as used in this Article is as defined in DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014) paragraph (a) (15).

B. Data Categories

1. Category A is the Recipient Data developed and paid for totally by private funds, and is Data to which the Recipient retains all rights. Category A Data shall not include NSRP Intellectual Property. Category A Data shall include, but not be limited to,
 - (a) the computer software, and any designs or other material provided by the Recipient which was not developed in the performance of work under this Agreement, and for which the Recipient retains all rights.
 - (b) any initial technical, marketing, or financial Data provided at the onset of the project by any of the Program Participants. Such information shall be marked "Category A" pursuant to the Proprietary Information Exchange Agreement accompanying the Articles of Collaboration and the subcontracts.
 - (c) client lists, except that any surveys of potential customers may be converted to Category B Data if the identification of parties may be efficiently removed.
2. Category B is any Data developed with mixed funding, i.e. data developed partially with costs from the Program Participants not charged to a Government contract and data developed partially with Government funding.
3. The Parties to this Agreement understand and agree that the Program Participants shall mark all documents in accordance with this Article and that the Freedom of Information Act and Trade Secrets Act apply to Data.

C. Allocation of Principal Rights

1. The Government shall have no rights to Category A Data.
2. The Government shall normally have immediate Government Purpose Rights to Category B Data upon project or Agreement completion (whichever is earlier). In unusual circumstances, the Recipient may request specifically negotiated license rights, including a delay of Government Purpose rights. Such requests shall be submitted to the Program Administrator for approval prior to award of any Task Order, and will only be made in those cases where the Recipient has validated the unique requirement through the formal voting procedures of the ECB of the NSRP and subsequently approved by the Government. In no case will the Government accept lessor rights than Limited Rights for technical data or Restricted Rights for computer software. Government approved, specifically negotiated rights shall be included in the Task Order award for any Project.
3. Data that will be delivered, furnished, or otherwise provided to the Government under this Agreement, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless the parties have agreed otherwise, or any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.
4. The Recipient may prepare a supplemental list of Category A and B Data items for incorporation into the applicable Task Order within a reasonable period following award of the Task Order. Following mutual agreement of the Parties on the supplemental list of Category A and B Data, the Program Administrator's Contract Representative will incorporate the list by written notification.

D. Marking of Data

To protect Program Participant's interests in data, all data shall be marked with an appropriate legend.

Category A and B Data delivered to the Government shall be marked Limited, Restricted or Government Purpose rights, as appropriate in accordance with the marking procedures of DFARS 252.227-7013 (FEB 2014) paragraph (f) and DFARS 252.227-7014 (FEB 2014) paragraph (f). It is not anticipated that any Category A Data will be delivered to the Government under each Task Order. The Government shall have unlimited rights for all unmarked Data.

E. Disclosure

In accordance with 32 CFR §37.900, information in programmatic, business, and project reports will not be publicly disclosed.

1. The Program Administrator will be exempt from disclosure under the Freedom of Information Act (FOIA) a trade secret or commercial and financial information that a Recipient provides after the award, if the information is privileged or confidential information. The DoD Component that receives the FOIA request will review the information in accordance with DoD procedures at 32 CFR 286.23(h) (and any DoD Component supplementary procedures) to determine whether it is privileged or confidential information under the FOIA exemption at 5 U.S.C. 552(b)(4), as implemented by the DoD at 32 CFR 286.12(d).
2. If the Recipient also provides information in the course of a competition prior to award, there is a statutory exemption for five (5) years from FOIA disclosure requirements for certain types of information submitted at that time (see §37.420).

F. Lower Tier Agreements

The Collaboration shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

G. Survival Rights

Provisions of this Article shall survive termination of this Agreement under Article II.

ARTICLE X: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect in accordance with the regulations cited herein.

A. Definitions

1. "Foreign Persons" means a natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a lawful permanent resident as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign government (e.g. diplomatic missions).
2. "Technology" means discoveries, innovations, know-how, and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.

B. Restrictions

The Parties agree that research findings and technology developments arising under this Agreement or any subsequent Task Orders may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Persons must be carefully controlled. The Recipient shall comply with the Export Administration Regulation (15 CFR 730-774) (the EAR) or the International Traffic in Arms Regulation (22 CFR 120-130) (the ITAR), the DoD Instruction 5220.22, "National Industrial Security Program (NISP)," March 18, 2011, National Industrial Security Program Operating Manual (DOD 5220.22-R) (the NISPOM), insofar as the EAR, the ITAR and the NISPOM apply to various activities performed in the execution of this Agreement or any subsequent Task Orders.

C. Lower Tier Agreements

The Recipient shall include this Article, suitably modified, to identify all Parties, in all subcontracts or lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

ARTICLE XI: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

In this article, "property" means any tangible personal property other than property actually consumed during the execution of work under each Task Order.

B. Title to Property

No significant items of property are expected to be acquired under this Agreement or any subsequent Task Order. Title to each item of property acquired or assembled under this Agreement or any subsequent Task Order with a total acquisition value of \$50,000 or less shall vest in the NSRP ASE upon acquisition with no further obligation of the Parties unless otherwise determined by the Program Administrator's Contract Representative. Should any item of property with an acquisition value greater than \$50,000 be required or created for a project selected by the ECB, the Recipient shall obtain written approval from the Program Administrator's Contract Representative via the Government Program Manager when pre-award evaluation is complete, prior to project award. The Government Program Manager will review property proposed below \$50,000 as part of source selection. The Recipient shall be responsible for the maintenance, repair, protection, and preservation of all property at its own expense. These requirements apply to property obtained using either Government cost share, Industry cost share, or a combination.

C. Disposition of Property

1. At the completion of the term of this Agreement, items or assemblies of property with a total acquisition value greater than \$50,000 shall be disposed of in the following manner:
 - a. Purchased by the Recipient or NSRP ASE Collaboration at an agreed-upon price, the price to represent fair market value, with the proceeds of the sale being returned to NAVSEA; or
 - b. Transferred to a Government research facility with title and ownership being transferred to the Government; or
 - c. Donated to a mutually agreed non-profit organization, University, or technical learning center for research purposes; or
 - d. Abandonment may be authorized, if approved by the Program Administrator; or
 - e. Any other Government-approved disposition procedure.

2. During the term of the Agreement, items of property with an acquisition value of \$50,000-or less, and which are no longer functional or needed, shall be disposed of according to the direction provided by the ECB through Program Administrator. Potential disposal means include, but are not limited to:
 - a. Sale at auction with proceeds returned to the NSRP operating account
 - b. Donation to a local school or charity
 - c. Transfer to another appropriate Navy or other governmental activity
3. In cases where the property has little or no remaining value, discard as waste. This disposal authority may be delegated by the ECB to the Program Administrator in cases of property with an acquisition value of \$10,000 or less.

ARTICLE XII: NATIONAL POLICY REQUIREMENTS

Using guidance from 32 CFR §§22 and 37, the Recipient is responsible for determining a Program Participant's qualification and compliance with National Policies prior to award (refer to § 22 Appendices A-C and § 37 Appendix E). The Recipient will ensure:

1. The potential Program Participant(s) meet the standards in § 22.415 and is qualified to receive the award; or
2. An award is justified to a Program Participant(s) that does not fully meet the standards, pursuant to § 22.405(b). In such cases, the Program Administrator will document in the award file the rationale for making an award to a participant that does not fully meet the standards.
3. In addition, the Program Administrator will be responsible for communicating other national policy requirements to recipients by including them as award terms or conditions. The following six requirements apply:
 - (a) Requirements concerning debarment and suspension in the OMB guidance in 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125
 - (b) Requirements concerning drug-free workplace in the Government-wide common rule that the DoD has codified at 32 CFR part 26
 - (c) Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.). They require Program Participants to flow down the prohibitions to team members performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services). For further information, see item a. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22
 - (d) Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.). They require flow down to all Program Participants. For further information, see item d. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22
 - (e) Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They require flow down to Program

Participants. For further information, see item e.1. under the heading “Nondiscrimination” in Appendix B to 32 CFR part 22

- (f) Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government
4. Other assurances that apply in certain circumstances include:
- (a) If the research involves human subjects or animals, it is subject to the requirements in item a. or b., respectively, under the heading “Live organisms” in Appendix B to 32 CFR part 22.
 - (b) If the research involves actions that may affect the environment, it is subject to the National Environmental Policy Act, which is item b.1. under the heading “Environmental Standards” in Appendix B to 32 CFR part 22. It also may be subject to one or more of the other requirements in items b.2. through b.6. under that heading, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.
5. In addition purchases are subject to the following National Policy requirements:
- (a) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). A contractor submitting a bid to the Recipient for a contract award of \$100,000 or more must file a certification with the Recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD’s codification of the Government-wide common rule implementing this amendment.
 - (b) Debarment and suspension. A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance in 2 CFR 180.220) shall not be made to parties listed on the Government-wide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System accessible on the Internet at www.epls.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

ARTICLE XIII: CONFIDENTIALITY

The term “Proprietary Information” as used in this Agreement means (1) confidential information, including without limitation, information received from third parties under confidential conditions, and (2) other technical, business, and financial information the use or disclosure of which might reasonably be construed to be contrary to the interest of the disclosing party.

Both parties understand and agree that they will (1) keep such information confidential at all times during and after the work, (2) not disclose or communicate the information to any third party, and (3) will not make use of the information on their company's own behalf, or on behalf of any third party.

To the extent that information related to the Task Orders issued hereunder is transmitted by either party to the other 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 as such by marking the information with an appropriate legend, marking, stamp, or positive written identification on the face thereof as proprietary to the disclosing party.

When disclosed orally, Proprietary Information shall be identified as Proprietary Information at the time of the disclosure. Within thirty (30) days of disclosure, the disclosing party must confirm the disclosure in writing to the other party 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.

The obligation of the parties with respect to handling and using proprietary information is not applicable to the following information if it:

- a) is published or otherwise in the public domain through no fault of the receiving party; or
- b) prior to disclosure hereunder, can be demonstrated by the receiving party to have been in its possession prior to receipt under this Agreement; or
- c) is properly obtained by the receiving party without restriction from a third party; or
- d) is disclosed to the receiving party by a third party with the written approval of the disclosing party; or
- e) is independently developed by the receiving party; or
- f) is disclosed after a period of three (3) years from the date received by the disclosing party.

ARTICLE XIV: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and language set forth in the Task Order, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement, (2) Task Orders (3) all other attachments.

ARTICLE XIV: EXECUTION

This Agreement, and all individual Task Orders subsequent to this agreement, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the parties.

EXHIBIT 1

ECB Articles of Collaboration

Article 7: Intellectual Property, Patents, Proprietary Data

(a) Except as provided in 7(b), each Party shall retain title to ECB Intellectual Property developed in the course of the ECB programs including but not limited to inventions, technical data rights and other data developed solely by its employees as a result of the performance of the Statement of Work in the Joint Funding Agreement. Inventions or technical data jointly developed by employees of more than one Party are jointly owned by the Parties participating in such joint development.

(b) ECB Intellectual Property is that Intellectual Property developed by and in the course of identified tasks assigned to and performed by any Party whether performed under Government funding or funding provided by a Party as agreed to as in-kind contribution in the Funding Agreement and/or in these Articles. The identified tasks shall be those tasks (i) agreed to by the Party in the Statement of Work in the Joint Funding Agreement, (ii) agreed to by the Party with other Parties of the ECB, or (iii) assigned to the Party by the ECB.

However, ECB Intellectual Property does not include (i) background Intellectual Property; (ii) Pre-existing or concurrently developed Intellectual Property independently funded outside of the ECB (including, but not limited to, Proprietary Technology); or (iii) continuation (improvement of subsequent) Intellectual Property of the respective Parties.

(c) All Parties grant to each other a non-transferable, royalty-free, non-exclusive, sublicensable license to use their ECB Intellectual Property, provided that such licenses and use shall be restricted solely to the performance of tasks under these Articles or under the Statement of Work of the Joint Funding Agreement. In addition, a party shall transfer this grant of license if it terminates its participation in the ECB. Such transfer shall be solely for the purpose of allowing the other Parties of the ECB to fulfill their tasks under these Articles or the Joint Funding Agreement. Such licenses shall survive the resignation of any granting Party from the ECB.

(d) All Parties agree to negotiate in good faith with other Parties to grant royalty-bearing licenses with reasonable terms and conditions to ECB Intellectual Property.

(e) The ECB favors, subject to Government requirements, an open publication policy to promote the commercial acceptance of the technology in the pertinent Statement of Work, but simultaneously desires to protect the Proprietary Information of the Parties developed both within and without the ECB because successful commercialization of aspects of the technology by some of the Parties may depend on the proprietary nature of the information. Each Party will individually decide whether to publish its own technical data or maintain it as proprietary. A Proprietary Information Exchange Agreement is incorporated herein and is found at Appendix "A" and will govern proprietary information exchanged among the Parties. The exchange of proprietary information between the ECB and the government will be governed by a similar Proprietary Information Exchange Agreement to be executed by the Government as a part of the Joint Funding Agreement.

(f) Notwithstanding the Proprietary Information Exchange Agreement when one Party's work depends upon the proprietary information of another Party, the technical data may be published to the extent that such data (i) is required for a description of the one Party's work, (ii) does not disclose

proprietary information, and (iii) relates primarily to system performance and characteristics. However, publication of the proprietary information may be delayed by its owner for a time period enabling the filing of patent applications, or for a period of no more than twelve (12) months, whichever is less. In the event that the Party's work depends on proprietary information developed by another Party in tasks outside the ECB, the proprietary information may be published only with the express written consent of the owner.

(g) Each Party will select its inventions for which it applies for patents. The Party is further responsible for prosecuting those applications and maintaining the resulting patents, both in the U.S. and in foreign countries. Any Party jointly owning an invention may file a patent application for it and the co-owning Parties will in good faith cooperate in the filing and processing of the application.

(h) Any patent application filed claiming ECB Intellectual Property shall include the provision required by the Joint Funding Agreement stating the interest of the U.S. Government.

The inventing Party will report a patent application claiming any ECB Intellectual Property to the ECB within one month of the filing and upon request, provide a copy of the application including a short abstract but without claims to the ECB. The ECB will timely report the invention including the short abstract to all Parties and to the Government as required by the Government. All Parties agree to cooperate with each other and the ECE in resolving questions related to Intellectual Property, the abstracts and potential ownership rights. Any such patent information shall be covered by the Proprietary Information Exchange Agreement and shall not be disclosed by the Government to non-governmental personnel until the respective patents have issued.

(i) The Joint Funding Agreement may provide for the Government to obtain certain rights in the ECB Intellectual Property. Each Party agrees to such Government rights in its ECB Intellectual Property provided such rights are reasonable, required by the Joint Funding Agreement and subject to the exclusions of § 7 (b). The Intellectual Property Rights provided to the ECB by the pertinent Joint Funding Agreement shall be provided in turn to the Parties according to the terms of these Articles. The Parties will cooperate with the ECB in performing any reporting, election, and rights predetermination to the Government regarding Intellectual Property as required and to provide the required information to the ECB.