

Medical CBRN Defense Consortium

Amended and Restated Articles of Collaboration

PURPOSE

These Medical CBRN Defense Consortium (“MCDC” or “Consortium”) Amended and Restated Articles of Collaboration (these “Articles” or this “Agreement”) made as of this 29th day of March, 2022 (the “Effective Date”) amend and restate the MCDC Articles of Collaboration made as of the 14th day of March 2016, as amended through September, 2020 (as amended, the “Existing Articles”) and are made by, between, and among following parties: (i) the Consortium Management Firm (“CMF” as further defined below), and any subsequent CMF that may become a party hereto in accordance with the terms hereof and (ii) the active MCDC Members as set forth on Exhibit A, as may be amended, from time to time in accordance with the terms hereof.

Hereinafter referred to as “MCDC Member Organization” or, collectively as “MCDC Member Organizations”; the MCDC Member Organizations and the CMF may also be referred to herein individually as a “Party” or collectively as “Parties.”

WHEREAS, the MCDC Members recognize that Government and industry share a common challenge to support the Department of Defense’s (DoD) medical pharmaceutical and diagnostic requirements as related to enhancing the mission effectiveness of military personnel;

WHEREAS, the MCDC Members wish to provide a unified and compelling message regarding the strategic importance of Chemical, Biological, Radiological, and Nuclear (CBRN) technologies and wish to ensure quick and efficient development of products in three major medical countermeasure objective areas: detection, prevention, and treatment;

WHEREAS, the MCDC Members wish to define programs and obtain program funding to accelerate the development of mission critical technologies in the areas of concern from applied research into advanced development that will result in championing, identifying, and fielding solutions for the Joint Program Executive Office for Chemical, Biological, Radiological and Nuclear Defense JPEO-CBRND and other stakeholders, including agencies in the United States Government and DoD chemical and biological defense enterprise;

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

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained in these Articles, the MCDC Members and the CMF agree as follows:

DEFINITIONS

HEREINAFTER the following definitions apply:

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

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case of non-corporate entities, direct or indirect ownership of at least 50% of the equity interest with the power to direct the management and policies of such non-corporate entities.

Consortium Management Firm or CMF refers to the organization acting on behalf of the MCDC (not as an agent of any individual Member) to negotiate, execute and administer the MCDC's efforts under an OTA and manage the Consortium in accordance with these Articles. The CMF will be prohibited from performing prototype research under the OTA. The CMF, guided by the MCDC Executive Committee, will support the operations of MCDC by providing cash management and vendor management services, meeting planning and execution, member recruitment and other member services.

MCDC means the Medical Chemical, Biological, Radiological, and Nuclear (CBRN) Defense Consortium, which is made up of Consortium Members from industry, academia, and non-profit organizations pursuant to these Articles.

Member or Members means respectively an individual MCDC Member organization or the MCDC Member organizations collectively that are or become signatories to, or otherwise bound by, these Articles.

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

Base Agreement means the agreement between the MCDC CMF and the MCDC Member organization that serves as the baseline agreement for all future Project Agreements. The Base Agreement flows down applicable terms and conditions from the OTA between the Government and the CMF on behalf of the MCDC.

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

ARTICLE 1: CONSORTIUM MEMBERSHIP

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

Membership Dues. MCDC Members will pay non-refundable annual dues to the CMF on behalf of MCDC every October 1st in the amount determined by the Executive Committee and communicated to the Members at least one month prior to implementing a change in annual dues, to be held by the CMF in accordance with the terms of these Articles. On a case-by-case basis, the Executive Director may consider a request to waive all or part of the dues for very small, innovative organizations, particularly those that qualify as non-traditional defense contractors.

Project Award Assessment. In addition to any initial and annual dues that all Members of the MCDC are required to pay, all recipients of Project Agreement funding shall pay the sum of no more than 0.75% (as adjusted pursuant to the last sentence of this paragraph) of all Government funds awarded under such Project Agreement to the CMF on behalf of MCDC to support MCDC operations and initiatives and to be held by the CMF in accordance with the terms of these Articles. The Executive Committee has responsibility for establishing the Project Award Assessment, will evaluate this assessment percentage on a periodic basis and may adjust it upward or downward by Executive Committee Resolution.

Obligations to be a Member in Good Standing.

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

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

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

- a) Be a U.S. firm or institution organized or existing under the laws of the United States, its territories, or possessions. For the purposes of these Articles, any agency or instrumentality of a foreign government shall not be granted Membership.
- b) Not be suspended or barred from contracting with or receiving funds from the United States Government;
- c) Clearly demonstrate in their Membership application that they have an interest in providing U.S. military forces and the nation safe, effective, and innovative medical solutions to counter CBRN threats; are capable of making a technical contribution to the advancement of CBRN technologies, and are willing to support the Medical CBRN Defense Consortium's goals and objectives;
- d) Contribute their respective talents and resources to the MCDC for activities such as periodic meeting attendance, committee and subcommittee participation, and other activities as may be appropriate;
- e) Maintain an active Military Critical Technical Data Agreement (Form DD 2345) with the U.S./ Canada Joint Certification Office, Defense Logistics Information Service, Federal Center, 74 Washington Ave., North Battle Creek, MI USA 49037-3084.
- f) Not transfer Membership to any third party;
- g) Provide compliant responses to project solicitations including agreement to abide by terms and conditions of the Base Agreement;
- h) Abide by the terms of these Articles.

ARTICLE 2: CONSORTIUM GOVERNANCE

Executive Committee. The affairs of the MCDC shall be governed by an Executive Committee, which shall consist of eleven (11) representatives unless such number is increased or decreased by resolution of the Executive Committee. The CMF shall have one, permanent seat on the Executive Committee, to be filled by the then-serving Executive Director. The other ten (10) seats (or such number as designated by the Executive Committee) shall be elected from Member organizations as follows: four (4) Members from large or non-profit businesses, four (4) Members from small businesses, and two (2) Members from academia in attempt to accurately represent membership distribution. The Executive Committee Officers shall include a Chair, a Vice-Chair, and a Treasurer, to be selected by the Executive Committee. Terms for Executive Committee members shall be three (3) years and may be extended on a case-by-case basis at the discretion and vote of the Executive Committee. Any elected person serving on the Executive Committee may be relieved of his/her position at any time for cause or for no cause by a two-thirds (2/3) vote of all members then serving on the Executive Committee. Unless stated otherwise in these Articles decisions of the Executive Committee shall require a majority vote of all members then serving on the Executive Committee. The Executive Committee is responsible for setting the strategic direction for the Consortium and advising the CMF regarding the operations of the Consortium. The Executive Committee shall use Resolutions to effect changes in policies, procedures, and operations provided such Resolutions do not conflict with any term of these Articles. Any Resolutions to be approved by the Executive Committee may be approved either (i) by a vote taken at any meeting of the Executive Committee (including any meeting held by means of electronic communications, including, without limitation, by videoconference or teleconference) if approved by the number of Executive Committee members required by these Articles to approve such Resolutions or (ii) by written consent if signed by the number of Executive Committee members required by these Articles to approve such Resolutions; provided, however, that if the Executive Committee takes any action by less than

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unanimous written consent, the Executive Committee shall provide notice of the taking of such action to all non-consenting members of the Executive Committee promptly thereafter.

All elected members of the Executive Committee are serving in a volunteer capacity. As such, to the extent it is available, the CMF shall procure liability insurance on behalf of the Executive Committee in the coverage amount of at least \$3,000,000 (unless such other lower amount is approved by the Executive Committee) to be paid for out of the MCDC funds available for operations. The CMF shall include the premiums and other expenses for such liability insurance in the Annual Operations Budget. For the avoidance of doubt, the CMF is solely acting to procure insurance on behalf of the Executive Committee and the CMF shall have no indemnification obligations with respect to Covered Persons for any claim by any Covered Person for any Covered Losses (each as defined below). Further, the CMF shall be responsible solely for procuring liability insurance on behalf of the Executive Committee and paying the associated premiums and other expenses for such liability insurance if and to the extent that the requisite funds are available in the Consortium Funds.

Additionally, the MCDC shall indemnify, defend and hold harmless each current and former elected representatives of the Executive Committee (each, a "Covered Person") to the full extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all, claims, demands, actions, suits, and proceedings (civil, criminal, administrative or investigative) in which the Covered Person may be involved, or threatened to be involved as a party or otherwise, in each case, arising out of or relating to such Covered Person's service on the Executive Committee (collectively, "Covered Losses"). The indemnification provided by this paragraph shall be in addition to any other rights to which a Covered Person may be entitled under any other agreement, as a matter of law or equity or otherwise, and shall inure to the benefit of the heirs and administrators of each Covered Person. The MCDC shall pay expenses as they are incurred by each Covered Person in connection with any action, claim, or proceeding that the Covered Person asserts in good faith to be subject to the indemnification obligations set forth herein. Any indemnification with respect to Covered Losses as provided under this paragraph by MCDC shall be satisfied solely out of (i) first, any insurance funds available pursuant to this Agreement, followed by (ii) the Consortium Funds up to the amount approved by the Executive Committee. For the avoidance of doubt, once such amounts have been exhausted, neither the CMF nor the MCDC or any Member shall have any further indemnification obligations with respect to such Covered Person for such Covered Losses. The provisions of this paragraph are for the benefit of each Covered Person and their respective heirs and administrators, each of whom shall be a third party beneficiary of this paragraph, and the provisions of this paragraph shall be enforceable by each Covered Person and their respective heirs and administrators.

In lieu of any duty (including any fiduciary duty), in law or at equity, that an Executive Committee member might have by reason of serving on the Executive Committee or in any position on the Executive Committee, each Executive Committee member's sole duty shall be to comply with the terms of these Articles, except that the foregoing shall not relieve any Executive Committee member from liability for a knowing violation of law. Each of the MCDC and each Member hereby waives any and all fiduciary duties that, absent such waiver, would otherwise be imposed or implied by applicable law upon any Executive Committee member.

No Covered Person shall have any personal liability to MCDC, the CMF or the Members for monetary damages for breach of the duty of care. No Covered Person shall be liable, in damages or otherwise, to the MCDC, the CMF or any Member for any loss that arises out of any act performed or omitted to be performed by him or her if (a) either (i) such Covered Person, at the time of such action or inaction, determined in good faith that such Covered Person's course of conduct was in, or not opposed to, the best interests of MCDC, or (ii) in the case of inaction by such Covered Person, such Covered Person did not intend such Covered Person's inaction to be harmful or opposed to the best interests of MCDC, and (b) the conduct of such Covered Person did not constitute a knowing violation of the law by such Covered Person.

MCDC Executive Committee representatives who are not employed by the CMF do not have access to any Member's proprietary data in possession of MCDC or CMF, are not provided advance insight of potential

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government solicitations, and do not participate in, influence, or have advanced insight of source selection and funding decisions made by the government.

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

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

Chair. The Chair shall preside over all meetings of the Executive Committee and oversee the affairs of the Executive Committee in accordance with policies and directives approved by the Executive Committee. The Chair shall not serve more than two successive terms.

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

Treasurer. The CMF shall be paid from the Consortium Funds for expenses incurred in support of the MCDC operations and in accordance with the spending plans approved by the Executive Committee. The Treasurer shall review and, to the extent consistent with the Annual Operations Budget, provide administrative approval of funds spent for operations by the Consortium Management Firm. The Treasurer, with the cooperation of the Executive Director and the CMF, shall render to the Executive Committee, at its regular meetings, or when the Executive Committee so requires, an account of the CMF’s transactions and of the net receipts and disbursements of the Consortium Funds controlled by the CMF.

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

Consortium Management Firm. Advanced Technology International is the initial Consortium Management Firm that will administer the affairs of the MCDC under the guidance of the Executive Committee until such time as Advanced Technology International is removed or replaced in accordance with this “Consortium Management Firm” section. The Consortium Management Firm is prohibited from participating in technical project work of the MCDC.

The Consortium Management Firm shall:

- Act as the point of contact for the MCDC for Members and the Government;
- Lead the negotiations with the Government on issues involving the OTA or other contractual documents;

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- Have signature authority for the MCDC within the scope of its authority set forth herein or otherwise delegated to the CMF through Resolutions of the Executive Committee or pursuant to the OTA to include signing the OTA and subsequent modifications;
- Provide “single point contracting” functions as needed to execute the OTA or other agreements;
- Use best efforts to guard against the disclosure of competitively sensitive information and, together with the Executive Committee, institute antitrust compliance policies and procedures for the MCDC;
- Together with the Executive Committee, take appropriate steps to avoid organizational conflicts of interest among the Members and to mitigate such conflicts if they cannot be avoided;
- Be responsible for the daily management of the MCDC, which includes member recruitment, engagement, and management;
- Represent the MCDC at conferences, and when appropriate execute membership meetings;
- Provide the Executive Director position, subject to approval by the Executive Committee;
- File with the U.S. Attorney General and the Federal Trade Commission changes in Membership in accordance with the provisions of the National Cooperative Research Act of 1993 within 90 days of approval of these Articles;
- Be responsible for the financial functions to include invoicing, collecting, and tracking Membership dues/project assessments from Member organizations, executing agreements with and making payments to vendors as appropriate in support of MCDC operations.

The current CMF, Advanced Technology International, will serve a term through September 30, 2026. Subsequent five year terms are subject to the approval process described herein. Notwithstanding anything to the contrary in these Articles, the CMF shall not have the authority to take any of the following actions without the prior approval of the Executive Committee:

- Enter into any contract or agreement on behalf of MCDC between MCDC, on the one hand, and the CMF or any of its Affiliates, on the other hand; or
- Make any expenditures of the funds held by the CMF on behalf of MCDC, other than any expenditures expressly set forth in the then effective Annual Operations Budget or as authorized by the Executive Committee;

Executive Director. The Executive Director shall serve on the MCDC Executive Committee as a voting Member. The Executive Director oversees operations of MCDC according to the policies, procedures, and strategic direction set by the Executive Committee and will serve as the single point of contact to the Members, the Government or their respective designees. The Consortium Management Firm will provide, subject to the Executive Committee’s approval, the Executive Director.

Article 3: CONSORTIUM FINANCES

Management of Consortium Funds. The Consortium shall operate on the funds collected through Membership dues and project award assessments (the “Consortium Funds”). All Consortium Funds will be deposited in an account that shall be held by the CMF and administered under the direction of the Executive Committee.

Budget Approval Process. Annually, the CMF shall prepare and submit a Consortium Operations budget for the upcoming year to the Executive Committee for review and approval (each such approved budget, an “Annual Operations Budget”). The Annual Operations Budget shall include a Statement of Work (SOW) and the total amount of estimated funding needed to complete the SOW, which will be reviewed and approved by the Executive Committee. The Executive Committee must approve any changes to the SOW and Annual

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Operations Budget. The CMF shall not be obligated to perform SOW tasks if the MCDC has insufficient funding.

ARTICLE 4: TERM AND DISSOLUTION

Term. Membership is renewed annually upon payment of non-refundable dues. Members may terminate Membership at any time by written notice to MCDC; and in its sole discretion, MCDC may terminate a Member's participation in the Consortium by written notice to a Member should such Member fail to comply with the Member Obligations set out in these Articles, as reasonably determined by the CMF and approved by the Executive Committee. In the event of the termination, Member's rights and obligations pursuant to any Project Agreements, including but not limited to, continued funding and technology contribution commitments shall continue in accordance with the specific terms of the Project Agreements. Further, (i) financial obligations to the Consortium, to include project assessments, shall remain in full force and effect until all outstanding obligations to the Consortium are satisfied according to these Articles and (ii) any indemnification obligations to the Consortium arising out of any actions or omissions occurring on or prior to the effective date of termination of a Member shall survive such Member's termination of membership and such Member shall continue to be bound by such obligations in accordance with the terms hereof.

Dissolution. The MCDC may be dissolved by a two-thirds (2/3) vote of all persons then-serving on the Executive Committee. Prior to dissolution, all unspent Consortium Funds after payment in full of all its debts, obligations, and necessary final expenses, or after the making of adequate provision thereof, shall be distributed as determined by the existing Executive Committee of the MCDC. In the event the then existing Executive Committee of MCDC cannot achieve a two-thirds (2/3) vote on the distribution, the funds shall be distributed to the U.S. Treasury. Each Member acknowledges and agrees that such Member has no right or claim to the Consortium Funds upon dissolution of the MCDC in accordance with this paragraph; provided, however, that such Member's rights and obligations pursuant to any Project Agreements, including but not limited to, continued funding and technology contribution commitments shall continue in accordance with the specific terms of the Project Agreements notwithstanding the dissolution of the MCDC.

ARTICLE 5: INDEPENDENT CONTRACTOR STATUS

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

ARTICLE 6: INTELLECTUAL PROPERTY/ PROPRIETARY DATA

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

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

ARTICLE 7: LIABILITY, INSURANCE, AND INDEMNIFICATION

Liability. To the extent authorized under individual state law for a state-owned Member, each Member acknowledges that it shall be responsible for any loss, cost, damage, claim, or other charge that arises out of or is caused by the actions of that Member or its employees or agents acting on its behalf to the extent of its negligence. No Member shall be liable for any loss, cost, damage, claim, or other charge that arises out of or is caused by the actions of any other Member or its employees or agents acting on its behalf. Joint and several liabilities will not attach to the Members; no Member is responsible for the actions of any other Member, but is only responsible for those tasks accepted by it and to which it agrees in any subsequent funding agreement. The Members agree that in no event will consequential, incidental, special, exemplary or punitive damages be applicable or awarded with respect to any dispute that may arise between or among the Members in connection with these Articles. In performing any obligation created under these Articles, the Members agree that each Member is acting as an independent party and not as an agent of any other Member. For the avoidance of doubt, any member of the Executive Committee serving in accordance with the provisions of these Articles shall be deemed to be acting on behalf of the Executive Committee and not as an agent or employee of such Executive Committee member's Member organization.

Insurance. Each Member agrees to obtain and maintain appropriate public liability and casualty insurance or adequate levels of self-insurance, to insure against any liability caused by that Member's obligations under these Articles.

Indemnification. Each Party to this Agreement, to the extent permissible by applicable law, shall indemnify and hold harmless each other Party, its officers, agents and employees, from any damage, expense, liability or claims of any kind resulting from their own acts or omissions, including but not limited to liability from injury to persons or damage to property arising out of its performance of work under this Agreement, including any and all reasonable out-of-pocket expenses, costs, attorney's fees, settlements, judgments or award in the defense of any such claim or lawsuits.

ARTICLE 8: GENERAL PROVISIONS

Amendments. No amendment or modification of these Articles shall be valid unless agreed to in writing by two-thirds (2/3) vote of all persons then serving on the MCDC Executive Committee. The Executive Committee may, at its discretion, refer certain proposed amendments to the full MCDC Membership for validation by a majority vote of the Membership.

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

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

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

Counterparts. This Agreement may be acknowledged or executed in one or more counterparts, including any membership application or any other documentation whereby the terms of this Agreement are incorporated by reference, each of which shall be deemed an original but all of which shall together constitute one and the same agreement.

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IN WITNESS WHEREOF, the Members and the CMF have caused these Articles to be executed by the duly authorized representatives on the respective dates entered below. In accordance with the Counterparts clause above, the CMF's signature page is on file at ATI.

MEMBER:

Name: _____ (Member Organization Name)

By: _____ (Member Organization Representative)

Title: _____ (Representative's Title)

Signature: _____

Date: _____

EXHIBIT A: LIST OF ACTIVE MCDC MEMBERS

EXHIBIT A, LIST OF ACTIVE MCDC MEMBERS, IS MAINTAINED BY THE CMF AND IS AVAILABLE ON THE MCDC WEBSITE.

EXHIBIT B: PROPRIETARY INFORMATION EXCHANGE AND NONDISCLOSURE AGREEMENT

This Exhibit B is an agreement between the Consortium Management Firm (CMF), and individual Consortium Members for the exchange of proprietary information in order to carry out the duties and obligations contemplated under these Articles, the OTA, and/or other agreements. Membership in the MCDC Consortium constitutes agreement to be bound by the terms and conditions contained in this Exhibit. This agreement, unless superseded by a separately executed nondisclosure agreement between the parties, is applicable to the CMF and individual Consortium Members in order for the CMF to satisfy its obligations under these Articles, the OTA, and/or other agreements. This Exhibit is not applicable to individual Consortium Members who decide to share proprietary information with each other unless they expressly agree to use these terms for that purpose.

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

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