

**ARTICLES OF COLLABORATION
FOR THE
ARMY EDUCATIONAL OUTREACH PROGRAM COOPERATIVE AGREEMENT (COA)
CONSORTIUM**

In response to the ARMY Educational Outreach Program (AEOP) Program Announcement (PA) W911SR-15-R-0003, these Articles of Collaboration (herein after referred to as the "Articles") are entered into by and among the following Members:

Battelle Memorial Institute, the Lead Organization (Consortium Lead Member), hereafter called the Lead Organization (LO): (Completed at Proposal Submission)

Consortium Members: (Completed at Proposal Submission)

HEREINAFTER, the LO and Consortium Members collectively are referred to as the "Consortium." The Consortium and the U.S. Army U.S. Army Combat Capabilities Development Command (CCDC) constitute the Cooperative Management Committee.

WHEREAS, the Members have significant experience, expertise, capabilities, interests, desire, and commitment to work collaboratively under the AEOP Collaborative Cooperative Agreement (hereinafter known as the AEOP COA) with the U.S. ARMY CCDC to administer programs which will engage students from underserved and underrepresented populations in Science, Technology, Engineering, and Mathematics (STEM) experiences during their elementary school years, encourage them to pursue STEM experiences and opportunities in their middle school years, and prepare them for college and career opportunities in their high school and undergraduate years.

WHEREAS, the COA identifies the roles and responsibilities of the Consortium Members (hereafter known as "Members"), including the Members' desire to cooperate, contribute resources, and perform specified tasks and the Members anticipation of receiving funding from U.S. Army Contracting Command – Aberdeen Proving Ground and CCDC for that purpose under the authority of 10 U.S.C. § 2358; 10 U. S. C. Section 2192: The Secretary of Defense under Title 10, U.S.C., Chapter 111, "Relating to Support of Science, Mathematics, Engineering Education and Training, Sections 2191-2199," establishes and implements policy, and assigns responsibilities and procedures to carry out Department of Defense (DOD) STEM activities; and 42 U. S. C. Section 6621 – Coordination of Federal STEM education and any other guiding policies and authorities included in the AEOP PA W911SR-15-R-0003 and the resulting award document and agreement; and

WHEREAS, the COA will include these executed Articles as an attachment to the COA and to the Individual Agreements between the LO and each Consortium Member; the Members' agree to be bound together by these Articles as a Consortium established under the authority of the executed AEOP COA; and

WHEREAS, the Members hereby establish the Consortium to engage in a collaborative effort of limited duration and the Consortium will exist for the duration of the time specified in the COA. This Consortium is established pursuant to the U.S. AEOP PA, competition, and award. The goal of the Consortium is to provide creative, innovative, and flexible approaches to collaborative STEM educational experiences as defined in PA W911SR-15-R-0003, the objective of which is to encourage students to pursue STEM experiences in their middle school years, and prepare them for college and career opportunities in their high school and undergraduate years.

NOW THEREFORE, the Members agree as follows:

ARTICLE 1 CONSORTIUM MEMBERSHIP AND MANAGEMENT

1.1. Consortium Membership

Consortium Membership, as outlined in the COA, consists of the LO and the other Consortium Members.

The Consortium acknowledges the membership role that "covered educational institutions," as defined by the Fiscal Year 2010 DOD Authorization Act, Public Law 111-84, will play as outlined in the COA, to include the Initial Program Plan (IPP) and the subsequent Annual Program Plans (APP).

1.2. Consortium Management

CCDC and the Consortium will establish a Cooperative Management Committee (CMC) to address issues concerning the AEOP.

The LO will be responsible for technical leadership in coordination with the other Members. The LO will provide leadership to the consortium, coordinate the efforts associated with all programs, and will be responsible for the distribution of funding to all Members of the Consortium. Subawardee funding will be provided to the Consortium Members with which the Subawardee has or will have a legal relationship. Funding will not be released until an approved APP is in place. Additionally, annual funding is contingent upon Congressional approval of the Federal budget.

The LO will also spearhead the efforts to meet identified core objectives and collect data/metrics on program success.

Program management duties and responsibilities are outlined in Section C, Article 3 of the COA.

Each Member is an equal partner, having one vote per Member on the CMC to support programmatic and management-related activities and decisions. All matters submitted to the CMC for a vote will be decided by a simple majority, with the LO deciding a tie.

The CMC will be responsible for the management and integration of the Consortium's efforts under the AEOP COA, to include programmatic, technical, reporting, financial, and

administrative matters. The CMC makes recommendations that concern the membership of the Consortium, the definition of the tasks, and goals of the participants. Areas of responsibility of each organization will be designated in a way that maximizes efficiency and collaboration among/between programs. It will be led by a single organization, the LO, with the ability to ensure all programs under the COA are focused on achieving the core objectives, previously mentioned.

Meetings will be conducted not less than quarterly by the CMC; not less than one meeting will be an “in- person” meeting, preferably the year-end program review, at the location specified by the Cooperative Agreement Manager (CAM).

The Agreement Officer is the Government's principal point of contact for all administrative, financial, or other non-technical issues arising under the Agreement.

Overall technical management and fiscal responsibility for the AEOP COA will reside with the CAM designated under the COA. All executables must be approved by the CAM. As part of the proposal process, offerors will submit an IPP for the first year of the new AEOP COA. (See PA for specifics). Every year after the first year of the award, the recipient will work with the consortium in developing an APP to be submitted as one document to the CAM prior to the start of the program cycle. The CAM will approve the APP and formally submit to the Agreements Officer for incorporation into the COA. This process will continue through the life of the COA. Each APP will cover a one-year timeframe, but may be altered, with the approval of the CAM and the Agreements Officer, if work requirements change. Funding will not be released until an approved APP is in place. Additionally, annual funding is contingent upon Congressional approval of the Federal budget.

During the course of performance, if it appears that established goals will not be met, the CMC will provide a proposed adjustment to the APP for approval by the CAM. In addition, the CAM may request that additional elements be added to the APP within the scope of the COA and, if necessary, will provide an adjusted annual budget. The APP will serve as an amendment to any programmatic changes. The Consortium, as an entity, will not solicit or accept funding from outside sources without the approval of the CAM and the Agreements Officer. During the course of performance, the Agreements Officer, in coordination with the CAM, will have approval authority for certain changes to the IPP/APP including but not limited to:

1. Changes in the scope or the objective of the program or IPP/APP;
2. Changes in the Program Description or Individual Program Administrators specified in the IPP/APP;
3. The need for additional Federal funding; and
4. Any subaward, transfer, or contracting out of substantive program performance under an award, unless described in the IPP/APP.

ARTICLE 2 CHANGES IN CONSORTIUM MEMBERSHIP

For purposes of Article 2, "days" means calendar days.

During the course of performance, the Agreement Officer, in coordination with the CAM, will have final approval authority for certain specific changes to the COA including, but not limited to:

- Changes to the Articles of Collaboration if such changes substantially alter the relationship of the Members as originally agreed upon;
- Solicitation or acceptance of funding under the agreement from sources other than CCDC; and
- Changes in Consortium membership.

Consortium Members acknowledge that the Consortium Membership may change during the course of the COA. Thus, the Consortium Members agree:

2.1. Resignation of the LO

The LO, due to its extensive role and involvement, will be required to provide a minimum 180 days' notice of its intent to resign or withdraw from the Consortium. Written notification by the LO of its intent to resign or withdraw must be made at a quarterly CMC Meeting at which time, the 180 day period of succession will begin. Over the following 180 days, the LO will make diligent efforts to transfer its assigned Consortium tasks and results to the Members and the new LO. Voting of a new LO will take place within 30 days of notice of the LO's intent to resign or withdraw, at which time designation of a new LO will be accomplished by a simple majority vote of the CMC. Final designation of a new LO will be subject to the approval of the Agreement Officer in coordination with the CAM. First consideration to this replacement will be given to remaining Members. If a successor LO cannot be found within the remaining Members (e.g., the remaining Members are unwilling or unqualified), the Members will seek out, investigate, negotiate with, and approve an LO from outside the Consortium. In all cases, the CAM will participate in the transition/approval process. The CMC may meet as frequently as every 30 days during the succession period of the LO in an effort to make a smooth transition. Actual and reasonable costs incurred, including non-cancellable commitments before the effective date of resignation or withdrawal and not incurred expressly in anticipation of the action, may be paid to the resigning Member. The resigning Member shall provide a replacing Member with a fully paid, royalty free, nontransferable, non-exclusive world-wide license to use its Consortium Intellectual Property solely for the performance of the transferred tasks and results.

2.2. Resignation of Other Consortium Members

Any Member (except the LO) may resign without penalty or risk from the Consortium at will upon ninety (90) days prior written notice to the CAM. During the ninety (90) day notice period, the resigning Member shall conclude its efforts in an orderly manner so as not to adversely impact the Consortium objectives. Actual and reasonable costs incurred, including non-cancellable commitments before the effective date of resignation or withdrawal and not incurred expressly in anticipation of the action, may be paid to the resigning Member. A resigning

Member shall make diligent effort to transfer its assigned Consortium tasks and results to the Member(s), if any, designated by the CMC to replace the resigning Member in performing such tasks. In the event such transfer effort extends beyond the 90-day period, then, upon approval of the AEOP COA Program Director, actual and reasonable costs properly incurred, in order to affect the transfer and not incurred expressly in anticipation of the action, may be paid to the resigning or withdrawing Member. The resigning Member shall provide a replacing Member with a royalty free, nontransferable, non-exclusive license to use its Consortium Intellectual Property solely for the performance of the transferred research tasks and results.

2.3. Removal of a Member

The CMC may by a simple majority vote, remove a Member from the Consortium with a thirty (30) day written notice to that Member for any of the following reasons:

- a) If that Member is not performing the tasks assigned to it under the COA;
- b) If that Member commits a significant violation of these Articles;
- c) If that Member is not reasonably cooperating with the Consortium and its Members in activities contemplated by these Articles; or
- d) If, due to the length of the proposed period of performance, including option years, the program or direction of research evolves such that a Member's expertise no longer fits the program requirements.

Should a Member be removed, all actual and reasonable costs incurred by the Member up to and including the date of removal may be reimbursed.

2.4. Addition of New Members/Change in Membership Status

The CMC may admit new Members or change an existing Member's status (e.g., Member to LO or vice versa) to the Consortium, subject to the approval of the CAM, as it relates to the AEOP COA program. The admission of a new Member or the change in status of an existing Member shall become effective upon:

- a) A simple majority vote of the CMC;
- b) Written approval by the CAM of the potential new Member or the change in status of an existing Member;
- c) Execution by the new Member of an amendment to these Articles signifying their participation or, in the case of the change in existing membership status, executing an amendment, as appropriate, to these articles recognizing their new status;
- d) The new Member becoming a signatory to the COA with all amendments effective at the time of becoming such; and
- e) U.S. Army Contracting Command – Aberdeen Proving Ground approving an amendment to the COA to show the addition of the new Member or change in status of an existing Member.

The Agreements Officer, in coordination with the CAM, will be notified of and have final approval authority for Member changes to the COA.

ARTICLE 3 FINANCIAL, PERSONNEL, FACILITIES, AND REPORTING RESPONSIBILITIES

3.1. Financial Responsibilities

Through execution of these Articles, the Members authorize the LO to receive and disburse Agency funds on behalf of the Consortium. The LO maintains Defense Contract Audit Agency (DCAA)/Defense Contract Management Agency (DCMA) audited and accepted accounting, invoicing, and purchasing systems. As a non-profit organization, the LO will submit a copy of the OMB Circular A-133 report to their cognitive DCAA/DCMA office and Administrative Contracting Officer.

The LO shall document Consortium performance through the issuance of a consolidated monthly report to the CAM. Consortium Members are responsible for timely submission of appropriate documentation to the LO to allow for the generation of this report. Unless agreed upon otherwise, Monthly Status Reports are due to the LO no later than the 8th calendar day of each month; the LO will submit to the CAM by the 15th calendar day of each month.

Performance and Financial Annual reports are due in accordance with Attachment 4 of the PA Solicitation. Annual reports are due January 30th – 30 days after the end of the reporting period end date of December 31st. The final report is due ninety (90) days after the COA expires or is terminated. Members recognize that failure to submit timely reports may result in payment delays or reductions in program funding. The IPP and the APP will serve as the baseline for funding disbursements. Funding disbursement is dependent upon the availability of Government funds. It is understood that the Government's liability to make payments to the Consortium is limited to only those funds obligated under the COA. Individual Members are responsible for the distribution of funds to their respective subawardees.

To minimize interruption of effort due to lack of funds, Members must notify the LO, in writing, and the LO shall notify the Agreement Officer in writing whenever the incurred and expensed cost to date when added to anticipated costs for the next sixty (60) days will exceed 75% of the obligated to date under this agreement.

All salary and travel costs associated with the rotation of Government personnel will be borne by the Government. All salary and travel costs associated with staff rotations of Consortium Members will be funded under the COA or may be provided by the Consortium Member as cost-share.

Journal Articles are strongly encouraged.

3.2. Personnel Responsibilities

Each Member shall make a good faith effort to provide those personnel identified in their respective proposal for the execution of tasks as defined therein and subsequently in the Program Plans. This commitment shall include, but not be limited to:

- 3.2.1 The ability to execute fundamental elements at a Government approved or designated location or at Member facility.
- 3.2.2 The ability to make available reasonable and adequate office facilities and administrative support (telephone, personal computer, etc.) for Consortium Members, as well as CCDC or Government personnel, performing research or technology transfer related activities at Consortium Member facilities. Anything above and beyond access to reasonable and adequate office facilities and administrative support is subject to negotiation and shall be reflected in the Program Plans.
- 3.3. Facilities

The Members are committed to making available identified facilities for the execution of fundamental element tasks as defined in their AEOP COA Proposal and the Program Plans. Such availability shall include, but not be limited to, reasonable facilities access for Consortium Members to support AEOP Program efforts at the Member's facility at times and places agreed to in advance so as not to disrupt other work. A schedule of such facilities usage shall be included in the Program Plans. Changes to this schedule shall be made with written notification to and approval of the CAM. This schedule should also include any costs for such facilities usage that are expected to be born under the COA. By signing these Articles, the Members agree to comply with all the applicable safety, environmental, security, and operational regulations and policies while performing AEOP COA efforts at each Member's facility.

3.4. Reporting Responsibilities

Consortium Members acknowledge the program reporting requirements set forth in the COA. The LO, through its role in the CMC, is responsible for submitting all reports to the CAM. Report contents are dependent upon timely and accurate submissions from the Consortium Membership; all Consortium Members pledge to exercise a good faith effort to submit timely and accurate report data as necessary.

ARTICLE 4 INTELLECTUAL PROPERTY

For purposes of Article 4, Consortium Members and Subawardees are defined as "Participants." Success of the AEOP COA is dependent on the establishment and maintenance of a collaborative environment that encourages and facilitates the sharing of intellectual property while providing adequate protection of ownership rights. Per the COA, the U.S. Government (USG) shall obtain "Government Purpose Rights" to Intellectual Property developed in the course of performing under the COA. (See 37 CFR Part 401, Rights to Inventions made by Non-Profit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements, included by reference in the COA).

CCDC does not waive the right to obtain, reproduce, publish, or otherwise use the data first produced under this award or to authorize others to receive, reproduce, publish, or otherwise use such data for Government purposes.

Participants will cooperate with CCDC in all reasonable respects to perfect the USG's rights. "Government Purpose Rights" do not include commercial application. (See Attachment 1 to the PA).

Members will cooperate with CCDC in transferring or otherwise making available rights to Consortium Intellectual Property for USG purposes.

In addition to the Intellectual Property Rights contained in 32 CFR 32.36 or 32 CFR 34.25 as applicable, incorporated by reference into this Agreement, the Members recognize that this program may result in intellectual property that is generated by the Recipient or Sub-Recipient personnel and Government personnel. Should this occur, the Members agree to use their best efforts to mutually agree to an equitable distribution of intellectual property rights and distribution of filing fees or other administrative costs. Should the Members reach an impasse in determining the distribution of intellectual property rights, the Members shall resort to the Disputes, Claims, and Appeals Process as set forth at 32 CFR 22.815. (See also alternative Dispute Resolution at Attachment 8 Article 21 incorporated from the COA into each members subaward agreement.)

4.1. Intellectual Property

"Intellectual Property" refers to intangible personal property to include, but not limited to, copyright, patents and patent applications, trademarks, technical data, and software rights.

4.2. Consortium Intellectual Property

"Consortium Intellectual Property" means that Intellectual Property made or created by a Participant in the course of performing tasks under the AEOP COA with Consortium funding, which may include Government funding and / or Consortium cost share recognized in the subject COA. The referenced tasks shall be those tasks that are specified in the COA, to include the IPP and APP.

4.3. Excluded Intellectual Property

"Excluded Intellectual Property" means Intellectual Property that is made or created by a Participant outside of the course of performing tasks under the AEOP COA.

4.4. Non-Exclusive License to Members

Each Participant hereby grants to all other Participants a nonexclusive, royalty-free, non-sublicenseable, non-assignable (non-transferable) license to Consortium Intellectual Property for the limited purpose of performing tasks under the AEOP COA.

4.4 Ownership

Each Participant has the option to retain sole title and ownership to Consortium Intellectual Property created solely by its employees. Consortium Intellectual Property made or created jointly among Participants shall be jointly owned by such Participants.

4.5 Patents

4.5.1 Patent Filing-Solely Owned Inventions – Each Participant electing to retain sole title to inventions made solely by its employees shall be subject to the obligations and conditions set forth in 37 CFR Part 401.

4.5.2 Patent Filing-Jointly Owned Inventions – In the event that an invention is jointly made by employees of more than one Participant ("Inventing Participant") during the performance of the COA:

- Each Inventing Participant electing to retain title to the ownership interest it received through its employees shall be subject to the obligations and conditions set forth in 37 CFR Part 401;
- Said Inventing Participant(s) shall jointly determine whether an application for patent shall be filed on such joint invention, the identity of the Participants who will prepare and file such application, and the countries in which such application will be filed;
- Unless otherwise agreed by the Inventing Participants, the actual out-of-pocket expenses of patenting such joint invention shall be divided equally between the Inventing Participants, provided that, when one Inventing Participant elects not to share equally in the expenses, the other Inventing Participant(s) shall have the right to seek or maintain such protection for such joint invention at its (their) own expense and shall be granted by the non-paying Inventing Participant full control over the preparation, prosecution, and maintenance of the patent application and issuing patent, even though title to any issuing patent will be jointly owned.

4.5.3 Disclosure and Prosecution of Participant Inventions – An Inventing Participant will report in writing to the LO, or designee, each Subject Invention within three (3) months after the Inventing Participant inventor discloses it in writing to the Inventing Participant's personnel or office responsible for patent matters, or within six (6) months after the Inventing Participant becomes aware of the Subject Invention, whichever is earlier.

At the time of such reporting, the Inventing Participant will provide the LO with a copy of such invention disclosure along with an abstract of the Subject Invention. The LO, or designee, will report the invention to the CAM, or another entity, as provided in the COA. Any Participant may obtain a copy of the above disclosure from the LO, or designee, and will respect the inventions confidentiality.

An Inventing Participant will also notify the LO, or designee, of any publications, sale, offer for sale, or public use of the Subject Invention and whether a manuscript has been submitted for publication at the time of the disclosure, or anytime thereafter with the filing of a patent application. An Inventing Participant will also notify the LO, or designee, promptly of any filing of a patent application, decision not to file, pay

maintenance fees, continue prosecution, or defend in reexamination or opposition proceeding any patent or patent application or a Subject Invention.

4.6 No Accounting

Subject to the licenses granted or to be granted according to the terms of these Articles, or any separate written agreement to the contrary, each Inventing Participant shall have the right to license its solely owned or jointly owned Consortium Intellectual Property to any third party, independently and at such royalty rates and upon such terms and conditions as it may determine. All royalties resulting from such licensing may be retained solely by the licensing Participant(s) without a requirement for accounting to any other Participant, unless otherwise negotiated. Jointly created copyrightable works shall be jointly owned; Intellectual Property inventions jointly made or generated by more than one Member shall be jointly owned by the Members unless otherwise agreed to in writing.

4.7 Obligation to Negotiate

All Inventing Participants agree, to the extent rights are available, to negotiate with other Participants licenses for consideration with reasonable terms and conditions to Consortium Intellectual Property which they own, solely or jointly, for purposes other than performance of tasks under the COA.

ARTICLE 5 INFORMATION EXCHANGE GUIDELINES

For purposes of Article 5, Consortium Members and Subawardees are defined as "Participants." WHEREAS, each of the Participants has technical expertise pertaining to certain intangible property including, but not limited to: inventions, reports, technical data, computer software, computer codes, designs, trade secrets, marketing, and proposal pricing information related to the AEOP Program which is appropriately considered to be commercially sensitive and proprietary{"Proprietary Information"}; and

WHEREAS, Participants recognize that the success of the AEOP is dependent upon the exchange of said Proprietary Information with other Participants; and

WHEREAS, each Participant agrees to exchange this commercially sensitive Proprietary Information for purposes of performing under the AEOP COA; and

WHEREAS, each Participant may wish to have their Proprietary Information protected from unauthorized use, reproduction, or disclosure;

NOW THEREFORE, the Participants hereto agree to the following Information Exchange Guidelines as follows:

- 5.1. Each Participant agrees that it will, to the extent it protects its own Proprietary Information, but to not less than a reasonable extent, protect from unauthorized use,

reproduction, and disclosure and will not disclose to any person outside its respective company/organization (other than Representatives of CCDC, other USG agencies, and other Participants as identified herein) or to any person within its respective company/organization not having a need to know for the purposes of the COA, and will not use or reproduce, except for the purposes of this agreement, any Proprietary Information:

- a) Which is disclosed hereunder to such receiving Participant, hereafter known as the "Recipient" of the information, in writing, whether tangible or electronic, and is designated by an appropriate stamp, marking or legend thereon to be of a proprietary, confidential, or commercially sensitive nature to the disclosing Participant, hereafter known as the "Discloser" of the information; or
 - b) Which is orally or visually disclosed to such Recipient and is identified at the time of disclosure as being proprietary or commercially sensitive by the Discloser provided that, within thirty (30) days of such oral or visual disclosure, the Discloser reduces the subject matter of the disclosure to a tangible or electronic form properly identified in the manner described above and delivers it to the Recipient.
- 5.2. All Participants acknowledge that the purpose of this Article is to promote the disclosure, and protection, of information which is identified as Proprietary Information by the Discloser of the information.
 - 5.3. Each Participant agrees to take appropriate action in accordance with Paragraph 5.1 above, to provide for the protection, safekeeping, and restricted use, reproduction, and disclosure of Proprietary Information received under this COA.
 - 5.4. No Participant shall be liable for disclosure of any such Proprietary Information if the same is disclosed by the Recipient with the prior written approval of the Owner.
 - 5.5. Notwithstanding the earlier termination of, or expiration of, the term of the COA, Proprietary Information received hereunder shall be protected by a Recipient as required by this Article for a period of five (5) years from the date of receipt thereof or for five (5) years after the expiration date of the Cooperative Agreement (COA), whichever is later.
 - 5.6. The standard of care to be employed by a Recipient shall be the same standard of care employed by the Recipient in treating its own Proprietary Information of like sensitivity. However, under no circumstances, shall the degree of care be less than reasonable. Furthermore, immediately upon discovering the loss or unauthorized disclosure of Proprietary Information received, the Recipient shall notify the Owner thereof and take all reasonable steps to retrieve and prevent further disclosure of such Proprietary Information.
 - 5.7. In the event and to the extent that Proprietary Information received under the COA: (i) is or becomes publicly available without breach of this Agreement (the "Articles"); or (ii) was, and can be shown by written records to have been, known to the Recipient, free of

any obligation to keep confidential and free of any restrictions on use and disclosure, at the time of its receipt hereunder from the Owner; or (iii) is rightfully received by the Recipient from a third party without breach of other agreements; or (iv) is and can be shown to have been independently developed by employees of the Recipient not having access to such Proprietary Information, or (v) is disclosed by the Owner to any third party, including the USG, without restriction upon its further disclosure, the Recipient shall not be liable for disclosure of such publicly available, known, third party-disclosed, or independently developed or owner-disclosed information. Proprietary Information, if required, may be disclosed pursuant to applicable law, regulation, or court order, provided that the Recipient will use reasonable efforts to afford the Owner an opportunity to limit or restrict such disclosure, or to obtain an appropriate protective/secretcy order with respect thereto.

- 5.8. It is understood and agreed that Proprietary Information received under the Cooperative Agreement (COA) may be disclosed by any Recipient to Army Research Laboratory in support of on-going research or in support of subsequent Program Plans provided the disclosure documentation (medium) containing the Proprietary Information bear restrictive legends such as:

"This document contains trade secrets, commercial, or financial information that is privileged or confidential. The disclosure of such information is prohibited under the Freedom of Information Act (5 U.S.C. Sec. 552) and other statute(s) prohibiting disclosure (*e.g.*, 18 U.S.C. Sec. 1905)."

- 5.9. Proprietary Information received under the COA may be used by the Recipient in the performance of any grant, contract, or other award in the program only as is authorized in writing by the Discloser.
- 5.10. Nothing contained in this Article shall be construed as granting or conferring any rights by license or otherwise in any Proprietary Information disclosed under the COA.
- 5.11. This Article shall benefit and be binding upon the Participants hereto, and the rights and obligations under this Article shall not be sold, assigned, nor otherwise transferred. Notwithstanding the foregoing, a Participant may assign its rights and obligations under the COA in their entirety to the purchaser of substantially all of the Participant's business to which the subject matter of this Article relates, subject to approval of CCDC and subject to return of any Proprietary Information of another Party which objects to transfer of its Proprietary Information to the assignee.
- 5.12. NO PARTY TO THIS AGREEMENT (the "Articles") SHALL BE LIABLE, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE TO THE SUBJECT MATTER OF THIS AGREEMENT.

CONFLICT OF INTEREST

An organizational conflict of interest may exist if an individual or organization has activities or relationships with another person or organization:

- Is unable or potentially unable to render impartial assistance or advice to the Government, or
- The person's or organization's objectivity in performing the contract work is/or might be impaired, or
- A person has an unfair competitive advantage.

It does not include the normal flow of benefits from incumbency.

For purposes of this COA and the Articles, the rules and intent of 32 CFR 32.42 and 32.43 will apply.

The Consortium Members performing work under this COA may receive, have access to, or participate in the development of proprietary or source selection information (e.g., cost or pricing information, budget information or analyses, specifications or work statements, etc.) or perform evaluation services which may create a current or subsequent Organizational Conflict of Interest (OCI).

Members shall be alert to OCI as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

The affected Consortium Member shall notify the LO who will work with the Agreements Officer whenever it becomes aware that such access or participation may result in any actual or potential OCI and shall promptly submit a plan to the Agreements Officer to avoid or mitigate any such OCI. The Consortium Member's mitigation plan will be determined to be acceptable solely at the discretion of the Agreements Officer. In the event the Agreements Officer unilaterally determines that any such OCI cannot be satisfactorily avoided or mitigated, the Agreements Officer may affect other remedies as he or she deems necessary, including prohibiting the Consortium Member from participation in subsequent program requirements, which may be affected by the OCI. The Agreements Officer's determination regarding the adequacy of the mitigation plan or the possibility of mitigation are general decisions made solely at the discretion of the Government and are not subject to the Claims, Disputes, and Appeals clause of the COA. The Government may terminate the COA if the Consortium Member fails to

implement and follow the procedures contained in any approved mitigation plan. (AEOP COA OCI Provision for additional guidance on Conflicts of Interest).

ARTICLE 6 MODIFICATIONS OR AMENDMENTS TO THE ARTICLES OF COLLABORATION

Any Party who wishes to modify these Articles will, upon reasonable notice of the proposed modification or amendment to the other Members, confer in good faith with the Members to determine the desirability of the proposed modification. Proposed amendments from Consortium Member must be coordinated through the LO (the signer of the Articles Agreement and the COA). Modifications will be subject to a vote in accordance with the Consortium Membership Voting Structure.

Amendments will not be effective until a written amendment is signed by the Articles Agreement signatories or their successors. Administrative amendments may be unilaterally executed by the Agreements Officer or by the Agreements Administrator.

ARTICLE 7 TERM OF THE AGREEMENT

The term of these Articles will commence upon the date of execution of these Articles based on the award of the COA and continue through the completion or termination of the Consortium's COA with CCDC. The basic term of the COA is ten (10) years.

ARTICLE 8 DISCLAIMER OF WARRANTIES AND CERTAIN LIABILITY

8.1. No Warranties

Except as explicitly set forth in these articles, the Members disclaim any warranties including any implied warranty of merchantability or fitness for a particular purpose for actions, omissions, technical information, data, or products developed in pursuit of the objectives of the Consortium.

8.2. Relationship of the Members

The Members are bound to each other by duties of good faith and reasonable efforts in achieving the goals of the AEOP COA. Joint and severable liability shall not attach to the Members. Therefore, no Member shall be responsible for the acts or omissions of another Member, but shall be only responsible for its own actions.

8.3. Liability Disclaimer

Members disclaim any liability for consequential, indirect, or special damages. In no event shall a Member's liability under these Articles exceed the funding it has received from the Agency up to the time of incurring such liability.

8.4. Property Liability

No Consortium Member shall be liable to another Member for any property belonging to the latter that has been consumed, damaged, or destroyed in the performance under the COA, unless it is due to the negligence or misconduct of the former Member or an employee or agent of same.

ARTICLE 9 WAIVER OF RIGHTS

Any waiver of any requirement contained in these Articles shall be by mutual agreement of the Consortium Members, subject to the approval of CCDC. Any waiver shall be reduced to writing and a copy of the waiver shall be provided to each Member. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Member hereto.

ARTICLE 10 SEVERABILITY

If any clause, provision, or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections herein and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or section had not been contained herein.

ARTICLE 11 FORCE MAJEURE

No Member shall be in breach of this Agreement for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that Member. In the event such a force majeure event occurs, the Member unable to perform shall promptly notify the other Members and shall in good faith maintain such partial performance and resume full performance as soon is reasonably possible.

ARTICLE 12 COMMUNICATION

Any notices or other communications required or permitted thereunder shall be deemed sufficiently given if hand-delivered, delivered electronically (i.e., email) with verification of receipt, sent by overnight carrier, or by certified first class mail postage prepaid to the following address for each Member:

The design and the organizational structure of this Consortium reflects the membership as suggested in the AEOP solicitation and is reflected in these “Articles of Collaboration”; however the operational aspect is far more complex.

The goal of having a consortium of this nature is not simply to reach the goal of outreach and a coherent effort, but to exceed the individual work of existing programs by joining forces. As the LO, Battelle views the consortium as an opportunity to capitalize on bringing these partners together to learn from each other, inform each other of their best work, to refine their programs based on the ongoing formative evaluation that is contemplated and to build the capacity of the programs to increase their quality year over year. While each can marginally improve individually; the entire portfolio of work can dramatically improve through our collaborative

efforts if we build upon the knowledge generated through all of the consortium's efforts. To accomplish this, the LO will expect more than legal obligations and compliance. To achieve "real" collaboration, all members agree to:

- Participate in facilitated knowledge sharing in good faith
- Seek to respond to the requests for discussion in a timely fashion
- Together identify areas of program improvement across the portfolio
- Determine how to integrate program refinements based on formative evaluation results; with such changes showing themselves within consortia dialogue, APP and mid-year program operational or technical adjustment (following approvals and protocols contained in the articles and agreements of the grant)
- Agree to use educational best practice and align to high expectations educational standards in all they do (for example, Common Core Math & English Language Arts, Next Generation Science Standards, etc.)

Battelle's, as the LO, seeks to create synergy rather than bureaucracy, Battelle will strike a strong collaborative leadership approach that both holds programs accountable for results and prizes and facilitates authentic ongoing collaboration and dialogue. Battelle's infrastructure support will identify the convening, facilitation and dialogue approach that is both attractive to individual programs and productive for consortia results.