



BATTELLE

**REQUEST FOR PROPOSAL (RFP)
PRIME CONTRACT NO. W911SR-15-2-0001
(COOPERATIVE AGREEMENT)**

Army Educational Outreach Program (AEOP) Evaluation

Prepared by:

Battelle Memorial Institute
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Columbus, Ohio 43201

Submitted to:

Bailey Kaverman
Subcontracts Representative
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April 2, 2024

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April 1, 2024

Request for Proposal (RFP)
Under Prime Contract No. W911SR-15-2-0001 (Cooperative Agreement)
Title: AEOP Program Evaluation

Battelle Memorial Institute (Battelle) hereby requests your organization to submit a written proposal submission based on the following:

1. **Type of Agreement:** A Cost Reimbursement Subaward is anticipated.
2. **Period of Performance.** This Agreement will include a Base Period and up to one (1) option periods to be exercised at the discretion of Battelle and its Government Client:
June 1, 2024 through September 30, 2024 (Base Period)
October 1, 2024 through September 30, 2025 (Option Period 1)
3. **Evaluation Criteria and Award and Basis of Award**
Best Value. The subaward resulting from this RFP will be awarded to the responsible offeror(s) whose offer conforms to this solicitation and is most advantageous to Battelle and its client, cost or other factors considered. The following evaluation factors and sub-factors and respective weightings shall be used to determine the “best value” to Battelle and its client.
 - (a) **Technical Evaluation (70%)**
 - (i) Evaluation Design
 - (ii) Communication and Collaboration Plan
 - (iii) Experience
 - (iv) Management Approach
 - (v) Project Narrative
 - (b) **Price Evaluation (30%)**
4. The subaward(s) resulting from this RFP will be awarded to the responsible offeror(s) whose offer conforms to this RFP and represents the best value to Battelle and its client.
5. **Award.** Any effort expended and any costs or expenses incurred by the Applicant as a result of this RFP shall be the sole responsibility of the Applicant. There is no obligation for Battelle to cover any Applicant costs incurred as a result of this RFP.
6. **Cost/Price Submittal Requirements.** The detailed information requested in Attachment A, Cost Proposal Instructions, shall be submitted as part of the Applicant's proposal/quote. Please note that the Applicant's cost proposal shall be subject to the applicable Federal Acquisition Regulation (FAR) and 2CFR principles related to cost or pricing data.
Terms and Conditions. The Terms and Conditions included herein shall apply to any subaward that is made as a result of this solicitation. Any exceptions or deviations taken to the terms and conditions must be noted in the proposal.
7. **Funding.** The award resulting from this RFP is subject to the availability of funds. The award has historically been funded at the estimated funding level of \$650,000 - \$750,000 total for the base period and option period (6/1/24-9/30/25). The U.S. Army has submitted the requisite documents to request funding for the period covered by the AEOP CA; however, applicants are reminded that this request is subject to Presidential, Congressional and Departmental approval. The funding levels provided in the RFP are for application preparation purposes only. The actual funding level of the cooperative agreement will be updated annually as part of the appropriation process.
 - a) **Cost share or match**

- i) Cost sharing or matching is not required to be responsive to this RFP. If included, cost sharing must clearly state how the funds will be used to meet AEOP's core objectives in support of its priorities. In order for cost sharing to be considered with an application, there must be a firm commitment by the organization for providing such.
 - b) **Profit/fee**
 - i) Profit/fee is not permitted under the cooperative agreement.
8. **Validity Date.** The Applicant's proposal must remain valid for 120 days from the date of submission of the proposal and must be so stated in Applicant's proposal.
9. **Certifications/Questionnaires.** As part of the Applicant's proposal and before any award may be made, the following certifications must be completed:
- Representations and Certifications (will be sent via invitation from Intelleges)

By submission of a proposal, the Applicant hereby certifies its compliance with the following clauses:

SF-LLL: Disclosure of Lobbying Activities

Recipients and Subrecipients may not use any Federal funds to influence or attempt to influence, directly or indirectly, congressional action on any legislative or appropriation matters. If applicable, complete SF- LLL. Applicability: If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the grant/cooperative agreement, you must complete and submit (Attachment 10) Standard Form - LLL, "Disclosure Form to Report Lobbying."

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (FAR 52.203-11)

- a) Definitions. As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).
- b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.
- c) Certification. The Applicant, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.
- d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the Applicant with respect to this contract, the Applicant shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The Applicant need not report regularly employed officers or employees of the Applicant to whom payments of reasonable compensation were made.
- e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, for each such failure.

(End of Provision)

If your organization is a small business, please visit Battelle’s Office of Supplier Diversity (OSD) website at http://www.battelle.org/productscontracts/small_business/index.aspx for information about registering with Battelle. If you have specific questions regarding the registration process or doing business with Battelle, please contact the OSD at 614.424.4900.

- 10. **Technical and/or Contractual Inquiries:** Any technical and/or contractual inquiries relative to this RFP should be directed, in writing, to Battelle through the attention of the cognizant Subcontracting point of contact.
- 11. **Gratuities:** By acknowledgement of response to this RFP, the Applicant hereby certifies that no gratuities were offered by the Applicant or solicited by any Battelle employee either directly or indirectly. Any situation where a gratuity is solicited should be reported immediately to the Office of General Counsel.

12. **Timeline for Selection Process**

RFP released	April 1, 2024
Proposal due	April 22, 2024 by 5:00 p.m. EST
Award notification	May 10, 2024
Start date	June 1, 2024

- 13. **Technical and/or Contractual Inquiries.** Any technical and/or contractual inquiries relative to this RFP should be directed to Battelle through the cognizant Subcontracting Representative, Project Director or Program Manager as follows. Please note that the Subcontracting Representative is the only individual authorized to legally commit Battelle to the expenditure of funds related to this RFP.

Subcontracting

Bailey Kaverman
 Phone: 614-424-4174
 Email: kaverman@battelle.org

Program Manager

Stephanie Johnson
 Phone: 614-424-4841
 Email: johnsonsa@battelle.org

- 14. **Proposal Submission.** The Applicant’s proposal and supporting information must be submitted via email as one PDF to Bailey Kaverman at kaverman@battelle.org and received no later than **5:00 pm EST on Monday, April 22, 2024.**

Your consideration regarding a response to this solicitation is appreciated.

Sincerely,

Bailey Kaverman
 Subcontracts Representative
 Battelle Memorial Institute

AEOP COOPERATIVE OUTREACH AGREEMENT (COA) PROGRAM EVALUATIONS

A. BACKGROUND

The United States Army has long recognized that a scientifically and technologically literate citizenry is our nation's best hope for a secure, rewarding, and successful future. For over 50 years, the Army has supported a wide range of educational opportunities in science, technology, engineering, and mathematics (STEM) for our youth, college and graduate students, and our valued teachers.

The need for STEM literacy—the ability to understand and apply concepts from STEM in order to solve our nation's most complex problems—is growing exponentially. The requirement for STEM literacy goes beyond the traditional STEM occupations of scientist, engineer, and mathematician. The Army also has a growing need for highly qualified, STEM-literate technicians and skilled workers in advanced manufacturing, logistics, management and other technology-driven fields. Success and sustainment for the Army's Science & Technology Enterprise heavily depends on the continuous development of innovative solutions that protect the greatest asset—our Soldier—and our nation, against current and emerging threats.

Through AEOP, the Army continues its long tradition and strong commitment to the advancement of STEM education and literacy. Leveraging its most valuable assets—world-class scientists and engineers and research facilities—AEOP offers our nation's youth and teachers a collaborative, cohesive portfolio of opportunities that effectively engage future workforce generations in meaningful, real-world STEM experiences, competitions, and paid internships.

From elementary school through graduate school, students of all proficiency levels, interests, socioeconomic backgrounds are encouraged to participate in real-world STEM experiences while also engaging with Army-sponsored mentors. Student programs within the AEOP portfolio include enrichment activities, including Gains in the Education of Mathematics and Science (GEMS), Camp Invention, and Unite; competitions, including eCYBERMISSION (eCM), Junior Solar Sprint (JSS), and the Junior Science and Humanities Symposium (JSHS); and internships and fellowships. Additionally, the portfolio includes Research Experiences for STEM Educators and Teachers (RESET). Full descriptions of each program can be found on the [AEOP website](#).

Through its programs, AEOP focuses on three primary goals:

1. **STEM Literate Citizenry** – Broaden, deepen, and diversify the pool of STEM talent in support of our defense industry base.
2. **STEM Savvy Educators** – Support and empower educators with unique Army research and technology resources.
3. **Sustainable Infrastructure** – Develop and implement a cohesive, coordinated, and sustainable STEM education outreach infrastructure across the Army.

Battelle is the lead organization for the AEOP Consortium, which includes representatives from academia, industry, non-profit organizations, and Government. Existing Consortium members are MetriKs Amerique, the National Science Teaching Association (NSTA), Rochester Institute of Technology (RIT), the Technology Student Association (TSA), Tennessee Technological University (TTU), and Widmeyer Communications.

B. PURPOSE

The U.S. Army Educational Outreach Program (AEOP), through its COA with Battelle, is seeking a evaluation partner that will be responsible for developing and managing the program evaluations to include design and instrumentation, data collection, verification, analysis, and the generation of annual evaluation reports. We encourage proposers to review prior year evaluation reports that can be found on the [AEOP website](#).

C. PROGRAM OVERVIEW

Aligned with the Federal STEM Strategic Plan and the Army's strategic plan, the AEOP calls for the evaluation of all programs within the AEOP portfolio utilizing evidence-based approaches to measure participant outcomes and impact. The evaluation should support the Consortium in making programmatic decisions that are driven by data and analysis; leading the Consortium in continuous learning and improvement; and operating with transparency and accountability. In addition to collecting data from the student participants, the evaluation partner must collect quantitative and qualitative data from teachers, mentors, alumni, and other participants in programs within the AEOP portfolio.

1. Research Questions

Through responses to this RFP, a consultant organization will be selected to work collaboratively with the AEOP Consortium to design, develop, and implement an Evaluation Plan for the portfolio that is in alignment with AEOP's Priorities & Core Objectives. Consortium partners are particularly interested in the following questions:

a) *Implementation*

- i) Who participates in AEOP programs and why?
- ii) What do AEOP participants like about the programs?
- iii) How could AEOP programs be improved?
- iv) What is the quality of the AEOP experiences in terms of instructional practice?

b) *Participant Experience*

- i) What did AEOP participants learn?
 - (1) STEM knowledge and competencies?
 - (2) STEM careers?
 - (3) Other AEOP programs?
 - (4) Army/Department of Defense (DoD) STEM careers?
- ii) Can students demonstrate STEM practices?
- iii) Did AEOP participants enjoy their experience?
- iv) Does AEOP programming encourage continued engagement with other programs within the AEOP portfolio?
- v) To what extent do participants learn about other AEOP programs?
- vi) Was the experience meaningful for teachers, mentors, and other adult volunteers?

This is not an exhaustive list; AEOP welcomes recommendations from the applicant.

2. Outcomes

The chart below includes the current AEOP near-, mid-, and long-term outcomes. We welcome the applicant's assessment of these outcomes and recommendations for how these could be modified to better enable the AEOP Consortium to measure our impact.

NEAR-TERM	MID-TERM	LONG-TERM
<ul style="list-style-type: none"> • Increased student interest and engagement in STEM (formal and informal) • Increased participant STEM competencies (STEM skills, knowledge, abilities, and confidence) • Increased participant awareness of, and interest in, AEOP opportunities • Increased participant awareness of, and interest in, STEM research and careers • Increased participant awareness of, and interest in, STEM research and careers with an emphasis on Army/DoD opportunities • S&E Mentors' impact on AEOP participants • Changes in teacher approaches to teaching about STEM concepts, practices, and careers in their classrooms • Implementation of evidence-based recommendations to improve programs 	<ul style="list-style-type: none"> • Sustained student appreciation of STEM and Army/DoD STEM • Increased student participation in other AEOP and DoD opportunities • Increased student pursuit of AEOP opportunities and DoD workforce development programs • Increased student pursuit of STEM coursework in secondary and post-secondary schooling • Increased student pursuit and achievement of STEM degrees • Increased student pursuit and achievement of STEM careers • Increased student pursuit and achievement of Army/DoD STEM careers • Continuous improvement and sustainability of the AEOP • Students' improvement in 21st Century Skills to include creativity and innovation, critical thinking and problem solving skills, communication and collaboration, information media, and technology skills, and life and career skills 	<ul style="list-style-type: none"> • Student's use of AEOP experience in further learning development • Student's application of learned capabilities in career choices • Student's sustained interest in STEM pursuits • Student's sustained interest in volunteering and participating in AEOP

3. Collaboration with Consortium Members and Other Partners

The evaluation partner will work closely in partnership with AEOP Consortium members throughout the course of the evaluation. Consortium members expect to work as thought partners and actively engage in all aspects of refining the design and implementation of this evaluation.

D. STATEMENT OF WORK (SOW)

1. Manage the Overall Project

The evaluation partner will maintain quality control and timeliness throughout the life of the project. During all phases of the contract, the evaluation partner will inform Battelle of progress as well as obstacles or issues encountered, proposed solutions, and next steps. The evaluation partner is also expected to plan and facilitate regular conference calls with Battelle and the Army.

- a) The evaluation partner will participate in a kick-off/orientation meeting at the onset of the project. The meeting will serve the following purposes: (a) review contract with Battelle and project management expectations; (b) orient the evaluation partner to AEOP Consortium partners; (c) review and discuss key design, methodological, and logistical issues; and (d) identify action items and next steps to support an effective evaluation launch. The evaluation partner will be responsible for generating a memo summarizing key decisions and action items.

- b) Secure Institutional Review Board (IRB) approval
- c) Ensure data has been securely transferred from current evaluation team and stored.
- d) Participate in AEOP Consortium meetings including monthly Consortium-wide calls, annual in-person and virtual meetings, and workgroups.

2. Conduct evaluation of AEOP programs

- a) **Assess Current Evaluation Practices:** The evaluation partner will be responsible for assessing the current outcomes, metrics, data collection tools and instruments, types of data available, data quality, and evaluation reports.
- b) **Refine Evaluation Plan:** Based on the findings from Task 2a, the evaluation partner will refine their proposed Evaluation Plan. The Evaluation Plan will be based on content in this RFP, decisions made during contract negotiation and the kick-off/orientation meeting (Task 1a), and availability of data (Task 2a). The purpose of the Evaluation Plan is to document and describe how the evaluation will be conducted, and the safeguards and quality assurance procedures that will be in place to ensure the quality, accuracy, and confidentiality of the data. The Evaluation Plan refined in this task will reflect the agreed upon plan and approach at the outset of the project. The Evaluation Plan will include plans for data collection (listing additional data the applicant recommends collecting) and detail sampling methods (if applicable). As the evaluation evolves, any proposed amendments to this Evaluation Plan must be approved by Battelle. Evaluation plans, including methods and assessments, shall be reviewed and revised annually if necessary to respond to changing AEOP or individual program priorities and emerging evaluation theory and practice.
- c) **Modify/Create Data Collection Protocols and Instruments:** Data collection protocols and instruments are already in existence and being used for the current AEOP evaluation. Based on the results of Task 2a, the evaluation partner will modify existing data collection protocols and instruments to meet the needs of this project consistent with the Evaluation Plan (Task 2b).
- d) **Collect Data:** The evaluation partner will be responsible for quantitative and qualitative data collection from AEOP student participants, mentors, teachers, and alumni for each program within the AEOP portfolio. At a minimum, data collected should include questionnaires, interviews and/or focus groups to obtain data described in Task 2b. It is the responsibility of the evaluation partner to provide training to AEOP Consortium partners and other partners and to coordinate with these stakeholders to collect data.
- e) **Analyze Data:** The evaluation partner will analyze data according to the Evaluation Plan (from Task 2b) and any addenda to answer the evaluation questions.
- f) **Maintain Online Data Collection System:** The evaluation partner will utilize a system to administer data collection instruments. Currently, Qualtrics is the data collection software used. The applicant can propose continued use of Qualtrics or another software. The Consortium utilizes Ideal-Logic for registration. Ideal-Logic will be managed by the Lead Organization, however, the evaluation partner will be expected to be familiar with the application in order to access data for reports.
- g) **Alumni Study:** In addition to evaluating the current programs within the AEOP portfolio, the evaluation partner will be responsible for managing the alumni evaluation. The AEOP alumni evaluation is a longitudinal study of our alumni. In cooperation with the AEOP Membership, the evaluation partner will assess the current alumni survey and make recommendations for modifications. The alumni evaluation purpose is to measure mid- and long-term impacts of AEOP based on those that participated from FY11–FY24, and leverage that infrastructure to support longitudinal tracking and study of those AEOP alumni as they are retained and/or leave the AEOP continuum. Some specific areas AEOP is interested in understanding about alumni include how AEOP programs impacted alumni attitudes toward STEM; if/how participation in AEOP programs influenced pursuit of STEM in secondary school, post-secondary STEM degrees, STEM careers, and Army/DoD STEM careers; and to what extent alumni participate in other AEOP programs and/or other STEM programs. While the timeline may not be conducive to writing a report of findings, the evaluation partner should expect to collect data from alumni.

3. Share Findings

- a) Reports: The evaluation partner will create a final summative evaluation report as well as reports for each of the 7 programs within the AEOP portfolio for the FY24 data collected by the current evaluation partner as well as data collected in FY25. In addition to these full reports, the evaluation partner will create briefings (one-pagers, small booklets, etc.) as requested by the Army to highlight and communicate positive trends or interesting findings.
- b) Dashboard: To enable transparency, Consortium members expect to have real-time access to verified data via a data dashboard to use the data to solve problems. The dashboard should be an easy-to-use tool that enables program administrators to monitor progress and adjust their programs, as needed.
- c) Data requests: AEOP receives several data requests each year from different Government entities, the evaluation partner will assist in gathering information required for these data calls. Each data call is unique and is typically comprised of summative information that may include but is not limited to varying categories of participant demographics, program participation numbers, and program costs. For the purposes of estimating, the evaluation partner shall assume 3 data calls per fiscal year.

4. Fiscal management

- a) Provide monthly financial reports and invoices to Battelle, ensuring transparent and consistent accounting. Financial reports will include monthly planned cost and actual costs and a discussion of variances against the plan.

E. DELIVERABLES

1. Annual Program Plan (APP): The Evaluation APP provides clear execution strategy for individual program evaluations and for all of AEOP. The Evaluation APP is part of the overall APP submitted by the Consortium and should include proposed assessment tools for each program as well as common metrics across AEOP, and a timeline.
2. Quarterly Programmatic Report.
3. Monthly Financial Report.
4. Annual Individual and Summative Program Evaluation Reports: These reports need to reflect a diverse sampling of program participants and indicate how the AEOP and its individual program elements have performed against their priorities and objectives. These reports shall also provide data driven recommendations for program improvements such that the Consortium can set goals and benchmarks for the following program year informed by the data.
5. Data Dashboard: This data dashboard should provide transparency and access to the AEOP Consortium and the CAM on progress toward preselected goals (as determined in collaboration with the Consortium).
6. One-page reports and/or digital formatted highlights of AEOP accomplishments in collaboration with the marketing team, as requested.

F. PERIOD OF PERFORMANCE AND MILESTONES

Partner Selected	May 10, 2024
Kick-off/Orientation Meeting	Within 10 days of contract start date
Submission of draft evaluation plan	Within 20 days of contract start date
Submission of final evaluation plan	Within 30 days of contract start date
Data collection begins	Within 30 days of contract start date
FY24 summative evaluation report	January 30, 2025
FY24 Individual Program evaluation reports	March 31, 2025
Data calls and highlights	As requested
Data dashboard	Due date to be defined within final evaluation plan
Alumni study	Due date to be defined within final evaluation plan

G. PROPOSAL CONTENT AND REQUIREMENTS

All proposals must be submitted via email to Bailey Kaverman at kaverman@battelle.org by 5:00 pm EST on April 22, 2024. The Review Team appreciates clear, concise, complete, carefully written, and proofread proposals that meet all guidelines.

Page limits are noted below and defined as 8.5" x 11" pages (standard letter size); double-spaced; with one-inch margins; and using Arial, 11-point font. The narrative must address, in sequence, each section identified below. Number all pages and include the applicant's name in the header of each page. **All proposals must be submitted as a single PDF in the order described below:**

1. A **Cover Page** with the date, organization's name, mailing address, telephone number, website, and name, email address, and telephone number for the technical and contractual points of contact. (1 page)
2. A **Proposal Narrative** describing how the applicant proposes to approach this evaluation, addressing the Research Questions, as well as the SOW in Section D. The applicant should include anticipated logistical or methodological challenges and how they will be addressed or minimized to achieve evaluation goals within the project period. The tasks described in Section D above, as well as any additional tasks proposed by the applicant, should be included in the proposal narrative and the proposed SOW. Applicants are encouraged to revise, expand and otherwise edit the tasks in the proposed SOW to enhance the project as long as they remain consistent with the overall project purpose and goals. (7 pages)
3. **Qualifications** describing how the applicant has been successful with a project of similar scope and scale that addresses the following: the number of years of experience the evaluation partner (evaluation team) has in designing and implementing performance measurement, applied research, or evaluation projects, especially a demonstrated history of evaluating out-of-school

time STEM learning programs; the team's experience with obtaining IRB approval; and a brief list of similar types of projects that were successfully concluded. Also describe the specific role played in the project and how it led to the outcomes described. (2 pages)

4. Detail the project's **Management Plan** and clearly describe how the evaluation team will work collaboratively with the AEOP Consortium to achieve project outcomes and ensure feedback and continuous improvement. The applicant should address how they intend to communicate with AEOP Consortium members. The Management Plan should delineate a schedule or work plan with major milestones for key project tasks. (2 pages)
5. **The Budget** should include totals for the following cost categories for the base period and option period: Personnel, Travel, Equipment, Supplies, Contracts, Miscellaneous (define in template), Indirect costs, and Cost Share (if provided). This project may include significant travel for site visits and national events, depending on the evaluation design. Specify cost-sharing or in-kind contributions (university in-kind support, school district support, leveraged funds from other state and national sources, etc.). Cost-share is not a requirement for proposal submission. The applicant is required to use the provided budget template in Attachment A. In addition to providing the budget worksheet, the applicant must include a budget narrative that provides the basis of estimate for each the cost category. (No page limit)
6. **Appendix**
 - a) **Résumés:** Include full résumés of proposed key personnel that reflect the number of years of experience designing and implementing performance measurement, applied research, or evaluation projects. There is a 2-page limit for each résumé.
 - b) **Work Samples:** Provide up to two (2) work samples from a project, such as evaluation plans or evaluation reports written by the applicant. There is no page limit for these samples.
7. **Attachments**
 - a) Cost Proposal (Attachment A)
 - b) Articles of Collaboration (Attachment B)
 - c) AEOP PII Guidance (Attachment C)
 - d) AEOP Cooperative Agreement Government Clauses (Attachment D)
 - e) Battelle Terms and Conditions- Government Subcontracts (Attachment E)

H. EVALUATION CRITERIA

Proposals will be screened to ensure the applicant is eligible and the proposal is compliant with the RFP. A review panel consisting of members from the AEOP Consortium and partners will review applications. Reviewers will score the applications, basing their scoring decisions and funding recommendations on the evaluation criteria specified in this program announcement. The following criteria will be used to score proposals. Proposals must address all evaluation criteria.

1. Evaluation Design

Proposed methodology, strategies, or approach clearly support attainment of project purpose and objectives. Key activities and procedures to complete the project are clearly articulated and reasonable.

- a) **Review process:** Describes the process for reviewing current AEOP evaluation outcomes, and processes and tools, including the alumni evaluation and making modifications, as needed.
- b) **Data collection and analysis:** Describes the process for collecting both quantitative and qualitative data and how this data will be analyzed. Includes a description of how the applicant will collaborate with Consortium members to ensure maximum participation.
- c) **Data dissemination:** Describes how data will be shared with Consortium members to include, but is not limited to, evaluation reports and briefs, data dashboard, and presentations.

2. Communication and Collaboration Plan

Plans for collaboration and communication with Consortium members to develop the project are clearly articulated.

3. Experience

Description of the applicant's prior work experience(s) is provided, specifically illustrating how they have been successful with a project of similar scope and scale especially related to out-of-school STEM programs. Experience described includes leadership, content knowledge, and capacity to deliver on the results promised. Key personnel have relevant experience for the proposed project. Roles are clearly described.

4. Management Approach

The management approach includes the proposed program organization, including a description of how it will be directed by the program manager. The approach also describes how the applicant proposes to interface with Battelle, the Army, and Consortium partners. The work plan demonstrates how the proposed activities relate to the proposed project, enabling the reviewer to understand the work that will take place and how it will be accomplished, with benchmarks and milestones. The work outlined in the plan is achievable within the timeframe allotted.

5. Project Budget/Narrative

Documentation is provided to demonstrate how the budget will be apportioned and prioritized. The staffing pattern clearly links responsibilities/levels of efforts to project tasks. Any collaborative effort (including subcontracts) with other organizations is clearly identified. The budget includes justifications and explanations for the amount requested, and the estimated costs are reasonable considering the anticipated results. Description is included of how the budget aligns with the overall project goals and activities, including how funds are prioritized and how existing or in-kind resources are being repurposed to ensure a dynamic project structure.

COST PROPOSAL INSTRUCTIONS/REQUIREMENTS

Costing inputs should be provided in sufficient detail for Battelle and its Government client to complete a cost/price analysis to determine fair and reasonableness as per the prime contract requirements and applicable U.S. Government (“Government”) regulations and statutes. Your summary sheets shall use a template identical or like the attached. Please note that Applicant’s cost proposal shall be subject to the applicable FAR principles relating to cost and/or pricing data. The award resulting from this competitive RFP is subject to the availability of funds. Offerors are encouraged to provide innovative approaches to meet all requirements of this solicitation at a lower cost to the Government. In addition, consideration will be given to Offerors who provide approaches that exceed the minimum requirements stated herein, even if additional funding would be necessary. Offerors should submit a base cost estimate to meet the needs described herein, and are encouraged to submit optional efforts to improve program impact with separate costs estimates for those options. The committee will weigh the additional cost versus additional benefits proposed by Offeror. Battelle recognizes that transition / startup costs may be required. If so please itemize those costs separately. The U.S. Army has submitted the requisite documents to request funding for the period covered by the AEOP Cooperative Agreement; however, applicants are reminded that this request is subject to Presidential, Congressional and Departmental approval. Offerors are encouraged to read the publicly available AEOP Annual Report at <https://www.usaeop.com/about/our-impact/>. The funding levels provided in this RFP are for application preparation purposes only. The actual funding level of the cooperative agreement will be updated annually as part of the appropriation process.

Additional instructions for the following basic elements of costs are applicable:

1. **Direct Labor:** Provide the following:

Hourly rates: Base hourly rates, overhead, and fees are to be separately identified.

If your proposed rates exceed more than one fiscal year and the labor rates will change, then please provide a time-phased breakdown of labor rates and any escalation factors (refer to 7).

- List of the individuals or labor categories being proposed
- Number of hours per labor individual or labor category
- Total number of labor dollars proposed per individual/labor category
- Qualifications: Provide a description of the qualifications (i.e., degree(s) and years of related experience) that includes the individual’s degree and years of related experience for all individuals or labor categories proposed.

2. **Materials, Equipment, Other Direct Cost:** Provide a consolidated price summary broken down by individual material quantities, description, etc. For travel, specifically breakout costs for each trip separately showing scheduled date, departure city, destination, number of people, duration, and number of trips.

The Offeror will not be responsible for the cost of CVENT in FY22. The cost associated with a replacement tool/approach or the use of CVENT during the option years (FY23 and beyond) shall be included in the proposed budget. This should be reflected as a separate line item(s) within the budget template. For the purposes of estimation, the Offeror is advised that the number of registrations per FY is approximately 35,000.

3. If the Offeror’s material costs being proposed exceed \$3,500, please also provide a basis for pricing (vendor quotes, invoice prices, etc.) for any item exceeds \$3,500. Also provide any quotations received. Such quotations shall contain the item description, unit price, unit of measure, quantity and total price. Also, provide a description of Applicant’s purchasing system or methods—for example, how sources are selected, under what circumstances when quotes are obtained, what provisions are made to ensure quantity and other discounts, and how

quotations are determined fair and reasonable. State whether the Applicant's purchasing system has been approved by the Government and, if so, provide evidence of such approval.

The Offeror will not be responsible for the cost of CVENT in FY22. The cost associated with the use of CVENT or a replacement tool during the option years (FY23 and beyond) shall be included in the proposed budget.

4. **Indirect Rates and Cost:** Applicant's indirect rates and costs shall be shown separately with the associated direct elements of costs.
5. **Estimating Methodology:** For proposals that exceed \$150,000 please provide a summary description of the proposed standard estimating system or methods. The summary description shall cover separately each major cost element (Direct Material, Engineering Labor, Indirect Costs, Other Direct Costs, Overhead, G&A, etc.) and should also address any escalation factor utilized in your estimating methodology. Also, provide the standard estimating month (i.e., 152 hours equals 1 equivalent person month). Identify any deviation from the standard estimating procedures in preparing this proposal volume.
6. **Profit/Fee Percentage:** Profit/Fee is not permitted under this agreement.
7. **Escalation Factor:** If an escalation factor is used, please state the percentage escalation used and the basis of the factor, such as Data Research Index (DRI), etc.
8. **Contractor-Acquired Property, Government-Furnished Property, and Government Property:** List all Contractor-Acquired Property, Government-Furnished Property, and Government Property, as defined in FAR 45, to be provided to/acquired by Applicant.
9. **Standard Estimating System:** Provide a description of Applicant's standard estimating system or methods of estimating. Cover separately each major cost element and identify any deviations from Applicant's standard estimating systems.
10. **Basis of Estimate (BOE):** For proposals that exceed \$150,000 please provide written BOE for the labor estimating rationale and methodology, and labor category and hours proposed. In addition, provide direct labor classification statement to include minimum qualifications (education, training, experience, etc.) for each category of labor proposed. Do not reflect any dollar amounts or labor rates in the BOE. The direct labor hours proposed in the BOE shall align with hour's bid described above.

COST/PRICING SUPPORT DOCUMENTATION

In addition to the Pricing Summary, please provide the following information:

1. Labor Qualifications

DIRECT LABOR CATEGORY/INDIVIDUAL	QUALIFICATIONS (DEGREE(S) AND YEARS OF RELATED EXPERIENCE)	BURDENED HOURLY RATE	FEE	FULLY BURDENED RATE

2. Direct Labor (This form is not needed if a Cost Reimbursement type contract is being proposed. Refer to the forms on the following page).

LABOR CATEGORY	HOURLY RATE	NUMBER OF HOURS	TOTAL

3. Material* and ODC (Other Direct Cost/Supplies)

ITEM	UNIT PRICE	LOT SIZE	QUANTITY	TOTAL PRICE

*Please identify any Government-furnished equipment/property included in your proposal.

4. Travel

POINT OF DEPARTURE	DESTINATION	NUMBER OF TRAVELERS	NUMBER OF DAYS	NUMBER OF TRIPS	TOTAL AMOUNT PROPOSED

**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 Research, Development and Engineering Command (RDECOM) 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 RDECOM 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 RDECOM 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

RDECOM 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 RDECOM; 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 RDECOM 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).

RDECOM 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 RDECOM 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 RDECOM 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 RDECOM, 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/secrecy 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 RDECOM 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 RDECOM. 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 RDECOM. 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.



Army Educational Outreach Program
AEOP PII Guidance



October 2018





AEOP PII Guidance

In the context of recent and evolving threats to our national security, the AEOP herewith emphasizes the need for vigilance in protecting the personally identifiable information (PII) of its key stakeholders, to include students, educators, partners, and colleagues. We collectively are the first line of defense and are responsible for protecting the personal information of one another.

This memorandum reminds all who obtain, access, store and transmit the data that has been entrusted to us, that PII must be treated with the utmost care, at all times. Any personal information that is collected, stored, or contained in our systems shall be handled so that the security and confidentiality of the information is preserved and protected by reasonable security safeguards against such risks as loss or unauthorized access, destruction, use, modification or disclosure of data. The privacy of an individual is a personal and fundamental right that will be respected and protected by all members of the AEOP Consortium.

A cultural shift toward social media as a preferred form of communication and networking means that extra care must be taken when operating in these public domains. Diligence must be exercised so that PII is not posted publicly through our interactions over social media. This document will outline the information that constitutes PII, as well as practices, for collecting, safeguarding, and transmitting it.

For questions regarding the safe handling of PII, please contact either the AEOP lead organization or AEOP's Cooperative Agreement Managers.

Definitions

- **PII:** Any information that can be used to distinguish or trace an individual's identity, such as his or her name, social security number, date, and place of birth, mother's maiden name and biometric records, including any other personal information, which is linked or linkable to a specific individual. This information can be in hardcopy (paper) or electronic format, stored on desktop computers, laptops, personal electronic devices such as blackberries, and found within databases. This includes but is not limited to education records, financial transactions, medical files, criminal records or employment history
- **High Impact PII:** Any organizational-wide, program or project level compilation of electronic records containing PII on 500 or more individuals stored on a single device or accessible through a single application or service. Also any compilation or electronic records containing PII on less than 500 individuals identified by the information or data owner as requiring additional protection measures.



Safeguarding and Handling

Appropriate administrative, technical and physical safeguards will be maintained to ensure the security and confidentiality of PII of consortium administration, members, partners, students, teachers, parents, and all associated personnel and to protect against any compromise which could result in substantial harm, embarrassment, inconvenience or unfairness to any individual whose information is stored or transferred in either hardcopy or electronic form.

Safeguarding PII requires all who have access to:

1. Minimize the collection of PII.
2. Ensure that compromise of PII is immediately reported to the AEOP Lead Organization
3. Reduce the use of or use alternatives to Social Security Numbers (SSN) whenever possible.
4. Ensure mobile computing devices or removable electronic media do not store or process High Impact PII without express approval from the U.S. Army.
5. Ensure mobile computing devices or removable electronic media that process or store High Impact electronic PII records are restricted to areas that are protected by adequate safety measures.
6. Ensure PII is only electronically transmitted through encrypted and secure mediums. PII may not be transmitted via unencrypted email nor may it be sent via facsimile (fax).

Storage

1. Do not store PII on media or devices with unregulated access.
2. Cover or place documents in an out-of-sight location when those without an official need to know enter the workplace.
3. Any PII stored on a shared drive or within a collaborative application should be controlled allowing only those with a need to know to have access. If PII is stored on a shared drive or within a collaboration application that is unable to properly safeguard the information by limiting access controls to the material then the data must be protected from being opened by individuals who do not have an official need to know.
4. PII should never be stored on personally owned information systems including computers, smart phones, tablets, memory cards, portable hard disks, etc.
5. Store PII to preclude unauthorized access during non-work hours. The PII should be stored in a locked desk, file cabinet, bookcase or office that is not accessible during non-duty hours.

Collecting, Transmitting and Transporting

1. All requests for PII should include an appropriate Privacy Statement to ensure the individuals(s) providing the PII understands how it will be used and/or distributed.
2. Only individuals with a valid need-to-know should transmit or receive PII in hardcopy or electronic form.
3. When mailing PII, use an opaque envelope, ensure it is properly sealed, is not marked with any reference to its contents and is addressed to the attention of an authorized recipient.
4. When physically transporting PII, ensure the information is adequately protected.



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5. Restrict discussions of PII over the telephone lines to a minimum for the official purposes only. Do not discuss PII within an open environment where it could be potentially overheard by those who do not have an official need to know.
 6. Ensure that all electronic records containing PII shall be transmitted by an Army approved encrypted or protected format. Only individuals with a valid need-to-know should transmit or receive PII in hardcopy or electronic form. Facsimile transmission is not an appropriate transportation method for PII.
 7. If in doubt as to the adequacy of protection measures, do not post, store, transport or transmit PII.
 8. The AMRDEC Safe Site is a viable alternative to unencrypted email and facsimile transmission (<https://safe.amrdec.army.mil/safe/>), as long as either the sender or receiver has a Common Access Card (CAC Card).

Internet and Social Media

1. PII should not be posted on publicly accessible websites, social media, or other locations on the internet.
2. Social media must be administered and actively monitored to ensure that public interaction with consortium managed accounts do not post or allude to PII. Swift action must be taken to take down, or correct PII posted via public interaction within consortium channels.
3. No aggregate of information posted publicly on the internet should allude to or infer possible PII.
4. If in doubt as to the adequacy of protection measures, do not post, store, transport or transmit PII.

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ARTICLE 2

General Definitions

2.1 Recipient – An organization or other entity receiving a Cooperative Agreement from a DoD Component. For purposes of this Agreement, the Recipient is the AEOP COA Consortium.

2.2 Party – For purposes of this Agreement, the parties are RDECOM and the Recipient. RDECOM is the executive agent for the AEOP on behalf of the Office of the Deputy Assistant Secretary of the Army for Research and Technology (DASA (R&T)).

2.3 Cooperative Agreement Manager (CAM) – Overall technical management and fiscal responsibility for the AEOP COA will reside with the CAM, designated under the cooperative agreement. The CAM will work closely with the AEOP funding and policy office in the office of the DASA(R&T) and the Agreements Officer at the U.S. Army Contracting Command - Aberdeen Proving Ground (ACC-APG). All executables must be approved by the CAM, to include, but not limited to, programmatic changes and budget. The CAM serves as the Agreements Officer's Representative.

2.4 Program Director (PD) – The PD is the Consortium's technical representative charged with the Consortium's overall responsibility for management and guidance of the Consortium. The PD will be designated by the LO of the Consortium and be a member of that organization.

2.5 Individual Program Administrator (IPA) - The IPA is the primary point of contact designated by the Consortium for each of the fundamental element(s) and should regularly communicate with the PD and CAM. It is acceptable for a Consortium member to be responsible for more than one fundamental element under this program announcement, depending on how the Consortium is formed and program responsibility is divided.

2.6 Local Program Coordinator (LPC) - In a few cases, programs/components have site-specific government employees who provide localized management/oversight at an Army laboratory or research facility. In these cases, that person is designated the LPC and at times, will communicate directly with the IPA member that is administering his/her respective program(s).

2.7 Cooperative Management Committee (CMC) – The AEOP COA will have a CMC that includes a representative from each member of the Consortium (should be the IPA, if possible). The CAM participates as an ex officio member in all discussions except those that deal with purely internal Consortium matters. The CMC will be chaired by the LO/PD. Each member will have one vote on the CMC to support programmatic and management-related activities and decisions. In the event of a tie, the LO will cast the deciding vote. The CMC will be responsible for the management and integration of the Consortium's efforts under the AEOP COA, to include

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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. Quarterly meetings will be conducted by the CMC.

2.9 Agreements Officer – The Agreements Officer is the Government's principal point of contact for all administrative, financial or other non-technical issues arising under the Agreement. The Agreements Officer is identified at Article 8.1.

2.9 Agreements Administrator – The Agreements Administrator has authority to administer Cooperative Agreements and, in coordination with the Agreement Officer, make determination and findings related to delegated administration functions.

ARTICLE 3

Program Management

3.1 The Cooperative Agreement Manager (CAM) is:

Ms. Christina Weber,
christina.l.weber.civ@mail.mil

3.2 The Members of the Consortium include:

3.3 The Program Director is:

Mr. David Burns

3.4 Overall Management Concept

RDECOM and the incoming AEOP COA Consortium will establish a Cooperative Management Committee to address issues concerning the AEOP. The LO of the Consortium will be responsible for technical leadership in coordination with the other Consortium members.

It is critical that the Consortium be structured and managed to foster an open, collaborative environment, in which each member of the Consortium is equal and receptive to leveraging knowledge and resources as well as sharing and adapting best practices to achieve AEOP's priorities and objectives. Each member of the Consortium will be a full

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member of the COA and will possess equal voting rights in accordance with the Articles of Collaboration. The Consortium should be managed efficiently and flexibly with defined areas of responsibility to minimize overhead, yet ensure relevance and proper oversight.

At the request of the Consortium and at the discretion of the US Army, additional programs and/or STEM Educational Outreach-oriented organizations may be added to or removed from the COA, in an effort to further advance the AEOP COA towards meeting the AEOP priorities and objectives outlined.

3.5 Consortium Membership

To be qualified, potential Consortium Members must:

- be judged to have adequate financial and technical resources, given those that would also be made available through the cooperative agreement, to execute the program of activities envisioned,
- have no known recent record of lack of responsibility or serious deficiency in executing such programs or activities,
- have no known recent record indicating a lack of integrity or business ethics,
- be otherwise qualified and eligible to receive an award under applicable laws and regulations

3.6 Lead of the Consortium

The LO will be charged with providing leadership to the Consortium as well as management and coordination of overarching efforts critical to the successful performance of all AEOP programs (e.g. finance, evaluations, communications/marketing, strategic partnerships, alumni management, etc.)

Furthermore, it will be the LO's responsibility to distribute annually-approved funding to all members of the Consortium with whom it has or will have a legal relationship. The LO will establish, lead and synchronize efforts to ensure the Consortium meets AEOP's goals and objectives. Additionally, the LO will collect and analyze data/metrics on AEOP's program success that will be translated into annual evaluation reports. The LO will ultimately be responsible for ensuring that requirements as outlined in the public announcement are met and that deliverables are submitted on time.

3.7 Place of Performance for all Consortium Participants

Performance by the LO of the Consortium is limited to the U.S.

3.8 Initial Program Plan (IPP) / Annual Program Plan (APP) -

As part of the proposal process, the Recipient submitted an initial program plan (IPP) for the first year of the new AEOP COA. Every year after the first year of the award, the recipient will work with the consortium in developing an annual program plan (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 cooperative agreement. This process will continue through the life of the cooperative agreement. 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 cooperative agreement and if necessary, will provide 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:

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1. Changes in the scope or the objective of the program or IPP/APP;
2. Change in the PD or IPAs specified in the IPP/APP;
3. The need for additional Federal funding; and
4. Any sub-award, transfer, or contracting out of substantive program performance under an award, unless described in the IPP/APP.

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

1. Changes to the Articles of Collaboration, if such changes substantially alter the relationship of the parties as originally agreed upon;
2. Solicitation or acceptance of funding under the agreement from federal partners and
3. Changes in Consortium membership.

ARTICLE 4

Fiscal Management

4.1 Allocation of Recipient Funds

4.1.1 Restrictions on the Use of Government Funds

Government funds provided under this Agreement must be allocated by the Recipient exclusively for the execution and operation of the IPP/APP or Agreement Scope. Government funds shall not be utilized to support the Recipient's operations or administration unrelated to this Agreement.

ARTICLE 5

Agreement Administration

5.1 Amendments to this Agreement

Any Party who wishes to amend this Agreement will, upon reasonable notice of the proposed amendment to the other Party, confer in good faith with the other Party to determine the desirability of the proposed amendment. Proposed amendments from Consortium Organization must be coordinated through the Lead Organization (the signer of the Agreement). Amendments will not be effective until a written amendment is signed by the Agreement signatories or their successors. Administrative amendments may be unilaterally executed by the Agreement Officer or by the Agreements Administrator.

5.2 Requirements for Approval for Changes to the Program Budget and Program Plan

This provision highlights Agency decisions on the terms and conditions of 32 CFR 32.25 and 32 CFR 34.15 as applicable. During the course of performance, the Agreement Officer, in coordination with the CAM, will have approval authority for certain specific changes to the IPP/APP when such changes are requested by the Recipient, including but not limited to:

- 5.2.1 Changes in the scope or the objective of the program, APP, or research milestones;
- 5.2.2 Change in the key personnel specified in the IPP/APP;
- 5.2.3 The absence for more than three months, or a 25% reduction in time devoted to the project, by the approved project director or principal investigator;
- 5.2.4 The need for additional Federal funding;
- 5.2.5 Any sub-award, transfer, or contracting out of substantive program performance under an award, unless described in the IPP/APP.

The CAM, in coordination with the CMC and RDECOM Management, will be responsible for integrating the IPP/APP into the overall AEOP programs.

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

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

ARTICLE 6

Term of the Agreement

6.1 Term of the Agreement The basic term of this Agreement will commence upon the effective date and continue through ten (10) years. Performance metrics are expected to include items that provide an indication of program success in alignment with the AEOP COA's goals and objectives as outlined in the public announcement.

ARTICLE 8

Public Release or Dissemination of Information

8.1 Open Publication Policy

Notwithstanding the reporting requirements of this Agreement, parties to this Agreement favor an open-publication policy but simultaneously recognize the necessity to protect proprietary information.

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8.2 Prior Review of Public Releases

The Parties agree to confer and consult with each other prior to publication or other disclosure of the results of work under this Agreement to ensure that no classified or proprietary information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each Party will offer the other Party ample opportunity (not to exceed 60 days) to review such proposed publication or disclosure, to submit objections, and to file application letters for patents in a timely manner.

8.3 Publication Legend

It is herein agreed that except for the disclosure of basic information regarding this Agreement such as membership, purpose and a general description of the work, the Recipient will submit all proposed public releases to the RDECOM Cooperative Agreement Manager for comment prior to release. Public releases include press releases, specific publicity or advertisement, and articles for proposed publication or presentation. In addition, articles for publication or presentation will contain an acknowledgement of support and a disclaimer. This should be included to read as follows. These statements may be placed either at the bottom of the first page or at the end of the paper.

DISTRIBUTION STATEMENT: Distribution authorized to U.S. Government agencies only in order to protect information not owned by the U.S. Government and marked with a statement of a legal property right as proprietary. Other requests for this document will be referred to the CAM (U.S. Army RDECOM, ATTN: AMSRD-PES, Louie Lopez, APG, MD 21005).

ARTICLE 9

Intellectual Property

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 participants 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 parties agree to use their best efforts to mutually agree to an equitable distribution of property rights and distribution of filing fees or other administrative costs. Should the parties reach an impasse in determining the distribution of property rights, the parties shall resort to the Disputes, Claims, and Appeals Process as set forth at 32 CFR 22.815. (See also alternative Dispute Resolution at Article 21)

ARTICLE 10 RESERVED

ARTICLE 11 RESERVED

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ARTICLE 12

Waiver of Requirements

Any waiver of any requirement contained in this Agreement shall be by mutual agreement of the parties hereto. Any waiver shall be reduced to writing and a copy of the waiver shall be provided to each Party. 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 Party hereto.

ARTICLE 13

Avoidance of Duplication of Work

To the maximum extent practical, the Recipient agrees to use the technical reference facilities of the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Ft. Belvoir, VA 22060-6218 (Internet address: <http://www.dtic.mil>) and all other sources, whether United States Government or private, for purpose of surveying existing knowledge and avoiding needless duplication of scientific and engineering effort.

ARTICLE 14

Metric System of Measurement

The Metric Conversion Act of 1975 as amended by the Omnibus Trade and Competitiveness Act of 1988 and implemented by Executive Order 12770 gives preference to the metric system. The Recipient shall ensure that the metric system is used to the maximum extent practicable in performance of this Agreement.

ARTICLE 15 RESERVED

ARTICLE 16 RESERVED

ARTICLE 17 RESERVED

ARTICLE 18 Force Majeure

Neither Party 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 Party. In the event such a force majeure event occurs, the Party unable to perform shall promptly notify the other Party and shall in good faith maintain such partial performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.

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ARTICLE 19 RESERVED

ARTICLE 20

Access to DoD Facilities

Should a Recipient's performance require access to DoD facilities, the employer shall coordinate with their CAM or designated point of contact providing access in order to obtain the most current access guidance. Commencement of access coordination should occur at least 10 days prior to the date of required access.

ARTICLE 22

Standard Terms and Conditions for Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations Department of Defense Directive (DoD 3210.06 and 32 CFR Parts 21-37)

Award, administration and performance under this agreement is subject to the requirements of the DoD Directive (32CFR Parts 21-37). Narratives following a reference indicate the Agency's decision on specific issues.

- 32 CFR 22.815 Claims, Disputes and Appeal
The Agency and Recipient will employ Alternative Dispute Resolution to resolve issues which arise during the performance of the agreement. The procedures to be used will be mutually agreed to when and if issues arise (see section 815(c)(2)). The Agreement Appeal Authority is the Director of RDECOM (see section 815(e)(i)).
- 32 CFR 32.21 Standards for Financial Management Systems
RDECOM does not guarantee or insure the repayment of money borrowed by the recipient. Further, REDCOM does not require the recipient to secure fidelity bond coverage to protect the Government's interests.
- 32 CFR 32.22 Payment
All payments made under this agreement will be of the reimbursement type. Recipients should refer to Article 5 Fiscal Management of this agreement for further information.
- 32 CFR 32.27 and 32.28 Allowable Costs The
Recipient shall comply with the appropriate cost principles.
- 32 CFR 32.23 Cost Share or Match
This provision is applicable only if cost share or match is included in the recipient's proposal and the subsequent award document. Should cost share or match be included, the parties to this agreement will mutually agree to its allowability, valuation and necessary documentation.
- 32 CFR 32.24 Program Income

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Should this agreement result in generating program income, the recipient shall account for said funds, add them to the funds committed to the project, and they shall be used to further the program objectives. The recipient shall have no obligation to the Government for program income earned after the expiration of the program. Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award document. The Patent and Trademark Amendments (35 U.S.C. Chapter 18) apply to inventions made under this award.

- 32 CFR 32.25 Revision of Budget/Program Plans

See Article 5 of this agreement.

- 32 CFR 32.26 Audit

Non-Profit entities shall submit a copy of the OMB Circular A-133 audit reports to the DoD Inspector General and to the Agreement Officer.

- 32 CFR 32.40 through 32.49 Procurement

RDECOM reserves the right to review prior to award procurement documents such as request for proposals, or invitations for bids, independent cost estimates etc., during performance under this award.

- 32 CFR 32.5 Sub-awards

This subpart sets forth the requirement for flow down provisions or subsequent sub-agreements or subawards.

- 32 CFR 32.30 through 32.37 Property

RDECOM waives the requirement for recordation of liens or other appropriate notices set forth at 32 CFR 32.37. Recipients are subject to applicable regulations governing patents and inventions, including Government wide regulations issued by the Department of Commerce at 37 CFR part 401 "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements." RDECOM 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.

- 32 CFR 32.51 and 32.52 Reports See

Attachment 5 to this agreement and Article 1.

- 32 CFR 32.53 Records

- 32 CFR 32.60 through 32.62 Termination and Enforcement

In addition to the termination processes set forth in 32 CFR 32.61, this Agreement may also be terminated by the Agreements Officer should available funds be insufficient to accomplish the goals or intent of the Agreement, or convenience of the Government.

- 32 CFR 32.71 through 32.73 After-the-Award Requirements

ARTICLE 21

Dispute Resolution

21.1. Dispute Resolution Process. The Government and the Consortium recognize that disputes relating to their rights and obligations hereunder may arise from time to time during the term of this Agreement. It is the objective of the Government and the Consortium to establish procedures to facilitate the resolution of disputes arising under

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this Agreement in an expeditious manner by mutual cooperation. To accomplish this objective, the Government and the Consortium agree to follow the procedures set forth in this Article if and when a dispute arises.

21.1.1 In the event of disputes between the Government and the Consortium, the party seeking to resolve such dispute will, by written notice to the other, have such dispute referred to the respective representatives designated below or their successors or designees. The respective representatives will attempt to resolve such disputes by good faith negotiations within fourteen (14) calendar days after such notice is received. Said designated representatives are as follows:

For the Government: Debra R. Abbruzzese
 Division Chief, ACC-APG, Edgewood Contracting Division
 E4215 Austin Road
 APG-EA, MD 21010-5401
 410 436-2554

For the Consortium: Designated Representative

21.1.2 In the event the designated representatives are not able to resolve disputes covered by Section 21.1.1 within fourteen (14) calendar days after notice is received, either the Government or the Consortium may invoke the provisions of Paragraph 21.2 set forth below. Notwithstanding, the AO for the Government is the only authorized representative of the Government who may modify this Agreement and/or Research Project Awards hereunder.

21.2 Alternative Dispute Resolution (ADR).

21.2.1 Disputes. This ADR procedure set forth below shall apply to all other disputes arising under this Agreement as well as all other disputes that arise under the Research Project Awards awarded pursuant to this Agreement:

- a. The Government and the Consortium agree to use a two-step procedure before resorting to litigation. Step one involves the submission of the dispute to a Standing Neutral. Step two involves the submission of the matter in dispute to a Mediator mutually agreed to by the Government and the Consortium.
- b. Step One: The Government and the Consortium have selected Dennis Longo, Special Competition Advocate, ACC-APG as the Standing Neutral and he/she has agreed to serve in that capacity and to be available on reasonable notice. In the event that the Standing Neutral named above becomes unwilling or unable to serve, the Government and the Consortium agree to select an alternate Standing Neutral.
- c. If the representatives of the Government and the Consortium designated in Paragraph 21.1 have not been able to resolve the dispute within fourteen (14) calendar days of receipt of notice of the dispute, either the Government or the Consortium may give written notice to the Standing Neutral briefly identifying the dispute and giving notice of its intention to submit the matter to the Standing Neutral.
- d. After the initial notice, neither the Government nor the Consortium shall initiate ex parte communications regarding the substance of the dispute with the Standing Neutral. The Standing Neutral shall schedule an initial conference for the Government and the Consortium with the forum for the initial conference to be at a convenient location selected at the discretion of the Standing Neutral. At the initial conference, the Government and the Consortium shall set forth the general basis of their positions in the dispute.
- e. After the initial conference, the manner and frequency of communications shall be at the discretion of the Standing Neutral. Within seven (7) calendar days of the initial conference, the Standing Neutral will notify the Government and the Consortium of the written documentation necessary to support their respective positions.

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- f. Within twenty (20) calendar days of receipt of notice from the Standing Neutral of the documentation needed, the Government and the Consortium shall submit a written position paper and the requested documentation. The written position paper shall, as a minimum, include the following:
1. Written statement of facts relevant to the dispute;
 2. The party's written position and rationale for its position;
 3. All other information supporting the party's position; and
 4. The documentation requested by the Standing Neutral.

The written position shall be submitted to the Standing Neutral and to other party contemporaneously. The Government and the Consortium further agree to honor all additional reasonable requests for information from the Standing Neutral.

- g. After receipt of the written position papers and documentation, the Standing Neutral may interview witnesses, request additional documents, and generally use all means at his or her disposal to gather facts relevant to the dispute.
- h. The Government and the Consortium may be represented by counsel in matters before the Standing Neutral. Each party will notify the Standing Neutral and the other party of the name, address, telephone and fax numbers, and electronic mail address of its counsel.
- i. The Standing Neutral will provide the Government and the Consortium a written statement of recommendation regarding resolution of the dispute within twenty (20) calendar days of the initial conference or receipt of the Government's and the Consortium's written position paper and documentation, whichever is later. The Government and the Consortium may mutually agree in writing to an extension of the date for the Standing Neutral to provide a written statement of recommendation. The Government and the Consortium shall equally share the cost of using the Standing Neutral, excluding attorney fees.
- j. The Standing Neutral must agree to apply the principles included in Attachment A to this Agreement to resolve the dispute. The Standing Neutral's written statement of recommendation is not binding on the Government or the Consortium. Within seven (7) calendar days after receipt of the written statement of recommendation, the Government or the Consortium may, by written notice to the Standing Neutral and the other party, identify any computational, typographical or similar error in the written statement of recommendation and request that the Standing Neutral correct such error. The Standing Neutral may also make similar corrections on his or her own initiative.
- k. Within fourteen (14) calendar days after the receipt of the Standing Neutral's written statement of recommendation, or corrected recommendation, the Government and the Consortium shall notify each other in writing of their intention to implement the recommendation or their intention to refer the matter to Mediation (Step Two).
- l. Step Two: If either the Government or the Consortium gives notice of its intent to refer the matter to Mediation, the Government and the Consortium will mutually select a Mediator. The Government and the Consortium acknowledge that mediation services are available from a wide range of potential providers, and that the most valuable provider may differ based on the nature of the unresolved dispute existing between the Government and the Consortium.
- m. The Government and the Consortium agree to exchange a list of not more than three potential mediators within seven (7) days of receipt of notice of the intent to refer the matter to Mediation. Each list of potential mediators shall contain sufficient information to allow the other party to evaluate the qualifications of the proposed

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mediator, including, at a minimum, name, address, and telephone number for the proposed mediator, and a brief description regarding any previous experience the proposing party has had with the mediator, including known fees or rates charged by the mediator. Within twenty (20) calendar days of notice of intent to refer the matter to Mediation, the Government and the Consortium shall mutually select a mediator from the lists of potential mediators (the "Mediator"). The Government and the Consortium shall equally share the cost of Mediation, excluding attorney fees.

- n. Although the mutually selected Mediator will likely establish the Mediation procedures, the Government and the Consortium agree in advance to the following basic procedures:
1. Participants - the Consortium shall be represented by the individual delineated in 21.1.1 or his/her successor or designee. The Government shall be represented by the individual delineated in 21.1.1, or his/her successor or designee. The Government and the Consortium may be represented by counsel in a matter before the Mediator. The Government and the Consortium will notify the Mediator and the other party of the name, address, telephone and fax numbers of their counsel.
 2. Duration - Either the Government or the Consortium may discontinue the mediation process at any time if it feels the process is no longer productive. If the Government or the Consortium chooses to withdraw from the process, the withdrawing party shall immediately notify the Mediator and the other participant.
 3. Confidentiality and Use of Information - All negotiations, documentation and statements pursuant to this ADR Procedure are considered confidential and shall be treated in accordance with all applicable rules of evidence and law, including but not limited to Federal Rules of Evidence (FRE), Rule 408 and 5 U.S.C. Sections 573 and 574. Neither the Government, the Consortium nor the Mediator shall voluntarily disclose any dispute resolution communications. The Mediator shall be disqualified as a witness, consultant or expert in any pending or future action relating to the subject matter of the Mediation. If the Mediator or the Government or the Consortium receives a demand for disclosure, then the notified party shall notify the Mediator and other party as soon as reasonably practicable and, in any event, prior to disclosure.
 4. The Government and the Consortium agree to provide the Mediator with all relevant information necessary, including the position papers and documentation provided to the Standing Neutral. The Government and the Consortium also agree to exchange additional information as recommended by the Mediator. The Government and the Consortium will participate in good faith and agree that personal attacks and inflammatory statements are unacceptable.
- o. This ADR Process shall be effective upon the signing of this Agreement. It may be modified or amended by mutual agreement of the Government and the Consortium. Any settlement agreement reached by the Government and the Consortium under this ADR Procedure shall be incorporated into the Agreement via formal written modification. No such modification(s) will be required if the agreement reached does not affect the contractual rights of the Government and the Consortium.

21.2.2 No ADR of Patent Issues. Disputes regarding the scope, validity and enforceability of patents shall not be subject to Section 21.2 and shall be submitted to a court of competent jurisdiction.

21.2.3 No ADR of Budget, Research Plan and Source Selection Issues. Disagreements regarding the Government's Budget, Research Plans or Source Selection Decisions are not subject to Section 21.2.

21.3 Disputes Not Resolved by Standing Neutral or Mediator. Any disputes between the Government and the Consortium not resolved by the process set forth in Articles 21.1 or 21.2 may be resolved in United States District Court for the District of Columbia.

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National Policy Requirements

By signing this Agreement or accepting funds under this Agreement, the subrecipient assures that it will comply with applicable provisions of the national policies on the following topics:

1. NONDISCRIMINATION

- a. 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.), as implemented by DoD regulations at 32 CFR part 195.
- b. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.). (Applicable to Educational Institutions only)
- c. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- d. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2. Live Organisms. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.

3. Environmental Standards.

- a. Comply with the applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. Seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11783 [3 CFR, 1971-1075 Comp., p. 799] and Environmental Protection Agency (EPA) rules at 40 CFR part 15. In accordance with the EPA rules, the Recipient further agrees that it will:
 - Not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5, as long as the facility remains on the list.
 - Notify the awarding agency if it intends to use a facility in performing this award that is on the List of Violating Facilities or that the Recipient knows has been recommended to be placed on the List of Violating Facilities.
- b. Identify to the awarding agency any impact this award may have on the quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4231, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

4. Officials Not to Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit arising from it, in accordance with 41 U.S.C. 22.

5. Preference for U.S. Flag Carriers. Travel supported by U.S. Government funds under this Agreement shall use U.S. -flag air carriers (air carriers holding certificates under 49 USC 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

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6. Cargo Preference. The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.

7. Military Recruiters. As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

(A) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any sub element of that institution);

(B) Any student at that institution (or any sub element of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(C) The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(D) Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any sub element of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.

ARTICLE 24

Reporting Requirements

1. Interim and Final Reports - The recipient shall submit monthly performance reports to the CAM and LPMs for each program beginning 30 days after award of the COA. The performance report will be sent electronically, and will provide a general update on the progress of each of the programs. Recipient format for the report is acceptable.

The recipient will deliver (electronically and in hard copy) a final report to the CAM no later than 90 days following the conclusion of each year of performance. Recipient format for the reports is acceptable. All reports/documents must be marked with the distribution statement B, provided below.

DISTRIBUTION STATEMENT : Distribution authorized to U.S. Government agencies only in order to protect information not owned by the U.S. Government and marked with a statement of a legal property right as proprietary. Other requests for this document will be referred to the CAM (U.S. Army RDECOM, ATTN: AMSRD-PES, Louie Lopez, APG, MD 21005).

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2. **JOINT PAPERS AND PRESENTATIONS:** Periodic joint papers and presentations will be given if/when determined necessary by the CAM.
3. **JOURNAL ARTICLES:** Journal articles in general and joint RDECOM/Recipient journal articles are strongly encouraged as a major reporting mechanism of this research effort.
4. **FINANCIAL REPORTING:** Federal Financial Report (SF 425): Annual and Final Reports

Reporting period end dates fall on the end of the calendar year for annual reports (12/31) and the end date of the Agreement project or period for the final report. Annual reports are due 30 days after the reporting period end date, and the final report is due 90 days after the end date of the Agreement.

All financial reports shall be submitted to the Agreement Administration Office identified in Block 6 of the SF 26. Copies of the forms and instructions may be found on the Internet at http://www.whitehouse.gov/omb/grants_forms.

The Recipient shall make distribution of the Annual and Final (SF425) Reports as follows: Cooperative Agreement Manager - 1 original plus 1 copy;
Agreement Administration Office - 1 copy
Agreements Officer - 1 copy

Note: The SF 425 is a single form that consolidates and replaces the Federal Cash Transaction Report (FACTOR or SF 272/SF 272A) and the Financial Status Report (FSR or SF 269/SF 269A).

The Recipient shall submit an annual financial report to the CAM electronically. The report will summarize (a) by cost element the total funds programmed and expended during the year for the administrative management offices, (b) the funded and expended cost for each program, (c) by cost element the total funds programmed and expended during the year for any programs, including additional/supplemental funding received from other sources. This report will be due no later than 120 calendar days after the completion of each year.

5. Enterprise-wide Contractor Manpower Reporting (CMR):

The Recipient shall report using an Enterprise-wide Contractor Manpower Reporting Application (eCMRA). The Recipient shall report ALL contractor labor hours (including subcontractor labor hours) required for performance of services provided under this Agreement via a secure data collection site. The Recipient is required to completely fill in all required data fields using the following web address: <http://www.ecmra.mil/>

Reporting inputs will be for the labor executed during the period of performance during each Government fiscal year (FY), which runs October 01 through September 30. While inputs may be reported any time during the FY, all data shall be reported no later than October 31 of each calendar year. Contractors may direct questions to the help desk at: <http://www.ecmra.mil/>

Terms and Conditions - Government Subcontracts

Except as may be set forth in the following terms and conditions with the Government Contracting Officer's express consent, the subcontractor shall not acquire any direct claim or direct course of action against the United States Government ("**Government**"). None of the following terms and conditions shall be construed in a manner that would adversely affect the interests of the Government, and in no event shall the terms of this subcontract give the Subcontractor the ability to directly pursue a claim or course of action against the Government.

Subcontractor, as identified in a Purchase Order ("**PO**"), agrees to provide to Battelle Memorial Institute ("**Battelle**") technical/research services and/or goods in accordance with the PO and, if applicable, a Statement of Work ("**SOW**") and/or other similar documents such as a task order, under the following terms and conditions. Headings are for convenience only and shall not be deemed to limit or otherwise affect the construction of any provision hereof.

1. INVOICING AND PAYMENT

- a) Payment terms are net forty-five (45) days from Battelle Accounts Payable's receipt of the Subcontractor's properly completed and documented invoice unless otherwise identified on the face of the PO. Subcontractor shall not invoice Battelle more frequently than once per month. Invoices shall be submitted via email to: accountspayable@battelle.org. All invoices shall contain an invoice number, the PO number, PO line numbers where associated costs should be applied, and the time period for which services were performed or goods were shipped. All invoices shall be accompanied by satisfactory supporting documentation as required by the flow-downs, subcontract type, and/or the Battelle Procurement Representative (e.g., detailed expense reports for travel, materials, and ODCs; receipts may be required upon request). Failure to include the required invoice information will result in non-payment until such time as a properly itemized invoice is received by Battelle. All invoices must be submitted to Battelle within ninety (90) days from the end of the month following the month in which the services and goods were provided; invoices submitted after this date will not be paid by BATTELLE. The final invoice shall be marked "Final Invoice." Invoices that do not contain the requisite information or are not accompanied by documentation required by this clause will be returned unpaid to the Subcontractor for revision.
- b) For subcontracts where labor hour reporting is required (e.g., time-and-materials, labor-hour, Cost Plus Fixed Fee, other cost type, or firm-fixed-price level-of-effort subcontracts), in addition to the foregoing requirements, invoices shall contain a breakdown of labor provided during the invoice period. This labor breakdown shall include the number of hours worked by each labor category/personnel, the applicable hourly rate, and the total labor charge for each category/personnel. These invoices shall include the following signed certification: "By submission of this invoice, Subcontractor certifies that all labor charges identified in this invoice were performed by named individual(s) or personnel that met all requirements, including but not limited to, the education and experience requirements of specified labor classifications applicable to this subcontract between Subcontractor and Battelle.
- c) Each payment made shall be subject to reduction by any amounts which are found by Battelle, Battelle's Client, or Subcontractor not to have been properly payable. Subcontractor shall promptly notify Battelle of any overpayments and remit the overpayment amount to Battelle along with a description of the overpayment, including the circumstances of the overpayment, affected PO and delivery order number, if applicable, and affected PO line item or subline item if applicable. Battelle, and any affiliate of Battelle, may withhold, deduct, and/or setoff all money due, or which may become due, from Battelle or any affiliate of Battelle, arising out of Subcontractor's performance under this PO or any other transaction Battelle and its affiliates may have with Subcontractor.

2. TAXES

- a) Battelle is currently exempt from sales tax on items delivered to, or taxable services performed in CO, CT, DC, FL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, RI, TN, TX, UT, VT, WV and WI; in NM and VA, Battelle is currently exempt only for purchase of tangible personal property and not purchased services; in UT, Battelle can issue an exemption certificate only if the total invoice exceeds \$1,000 USD. Sales tax will not be paid by Battelle on such subcontracts.
- b) California Form 590 Withholding Exemption Certificate - California Revenue and Taxation Code Section 18662 requires withholding of income tax on payments of California source service income made to nonresidents of California. Withholding is not required for goods and materials. The [CA590](#) is used to certify an exemption from nonresident withholding. Failure to properly complete a [CA590](#) will subject vendor payments to the required withholding which will then be paid directly to the State of California. For partial performance within the State of California by vendors who do not qualify for an exemption, the vendor may complete a Form [CA587](#) to establish the amount of income allocation subject to California withholding by Battelle. For questions on California Withholding, See FTB Publication 1017.
- c) All Subcontractors shall be solely responsible and liable for the payment of all current or future federal, state or local taxes, taxes related to wages paid to Subcontractor's employees, duties, tariffs, fees and any other charges, interest, penalties or assessments imposed by the government of any country or political subdivision thereof arising from this Agreement. Subcontractor shall indemnify, defend and hold Battelle and its officers, directors, agents, and employees harmless from any claims, actions, assessments and damages, including but not limited to, reasonable attorneys' fees, interest, and penalties, asserted or assessed against Battelle and its officers, directors, agents, and employees by any person, entity or government of any country or political subdivision thereof relating to Subcontractor's responsibilities under this clause.
- d) All payments made to Subcontractor for services performed or goods provided under this Agreement may be subject to the tax withholding requirements of an applicable jurisdiction. Subcontractors shall cooperate with Battelle in completing the appropriate tax withholding forms required by an applicable jurisdiction. If required by an applicable jurisdiction, Battelle will withhold from Subcontractor's payment the applicable tax withholding amount.

3. BATTELLE TECHNICAL REPRESENTATIVE

A Battelle Technical Representative may be identified in a PO and/or SOW or similar document such as a task order and may, from time to time, render assistance, give technical advice, or discuss or affect an exchange of information with Subcontractor's personnel concerning the services or goods to be provided hereunder. No such action shall be deemed to be a change under the "Changes" clause of these Terms and Conditions and shall not be the basis of an equitable adjustment. Only the applicable Battelle Procurement Representative has the authority to make changes to any PO and/or SOW or similar document such as a task order. Except as otherwise provided herein, all notices to be furnished by the Subcontractor shall be sent to the applicable Battelle Procurement Representative.

4. CHANGES

- a) The Battelle Procurement Representative may at any time, by written notice, and without notice to sureties or assigns, make changes to a PO and/or SOW or similar document such as a task order regarding one or more of the following: (i) description of services; (ii) drawings, designs, or specifications; (iii) method of shipping or packing; (iv) place of inspection, acceptance, or point of delivery; (v) time of performance; and (vi) place of performance.
- b) If any such change causes a change in the labor mix or the time required for performance, Subcontractor may request an equitable adjustment to price and/or delivery schedule.

- c) Subcontractor must request any equitable adjustment within seven (7) calendar days of receipt of the written change. If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, Battelle shall have the right to prescribe the manner of disposition of the property.
- d) Disagreement over any adjustment shall be resolved in accordance with the "Disputes" clause of these Terms and Conditions. However, nothing contained in this "Changes" clause shall excuse Subcontractor from proceeding without delay in its performance as directed.
- e) All changes, modifications, and amendments to these Terms and Conditions, any PO's and/or SOW's or similar documents such as a task order will be in writing.

5. GOVERNMENT CONTRACT REQUIREMENTS

Referenced within and/or attached to a PO and/or SOW or similar documents such as a task order, are flow down provisions of the Government Prime Contract (collectively, the "**Government Clauses**") which are hereby incorporated into these Terms and Conditions by reference. For purposes of these Terms and Conditions, terms contained therein, such as "client", "Buyer", a company name, "Government", "State of _____", and equivalent terms referring to Battelle's Client (hereinafter referred to as "**Client**"), shall be deemed to mean Battelle; and terms such as "Contractor", "Subcontractor", "Vendor," and equivalent terms shall be deemed to mean Subcontractor. Subcontractor shall include in each lower-tier subcontract the appropriate flow down clauses as required by the FAR and DFARS.

6. GOVERNMENT PROPERTY

Battelle or Client may provide Government-furnished property, as specified in the PO and/or SOW or similar document such as a task order, to the Subcontractor. The Subcontractor is responsible for notifying the Battelle Procurement Representative of any additional Government-furnished property provided for use in the performance of this subcontract. The Subcontractor is also responsible for obtaining prior approval from the Battelle Procurement Representative for the purchase of any property, equipment, or material for use in the performance of its services or provision of goods that was not previously proposed. If the Subcontractor has a Government approved property system, then Subcontractor shall notify Battelle of any changes in the status of its system. All Government property shall be administered in accordance with the provisions of FAR 52.245-1 or any referenced language in the Government Clauses.

7. COMMUNICATION WITH CLIENT

Battelle shall be solely responsible for all liaison and coordination with Client, with the sole exception of permitting small businesses to discuss payment or utilization matters with the Government Contracting Officer. Under no circumstances will Subcontractor act upon directions given to it by representatives of Client. If Subcontractor receives such directions from a representative of Client, Subcontractor will notify the Battelle Technical Representative as soon as possible and obtain written authorization from the Battelle Procurement Representative before taking any action based upon Client's directions. Battelle will not be liable for the cost of work performed by Subcontractor without written authorization by the Battelle Procurement Representative.

8. TIME IS OF THE ESSENCE

Time is of the essence related to any dates or schedules related to Subcontractor's performance.

9. CONFLICT OF INTEREST

In addition to any specific conflict of interest requirements contained in any PO and/or SOW or similar documents such as a task order and those pursuant to the provisions of FAR 9.5, Subcontractor warrants that it is and shall remain free of any obligation or restriction, which would interfere or be inconsistent with or present a conflict of interest concerning the work to be furnished by Subcontractor hereunder.

10. PUBLICITY

No public releases including those for news, advertising, information, technical or scientific purposes relating to any PO and/or SOW or other document such as a task order shall be issued by Subcontractor or by any second or lower tier subcontractor without Battelle's prior written consent. Battelle does not endorse products or services. Accordingly, Subcontractor shall not use or imply Battelle or Client's name, or use Battelle or Client's information or reports, for advertising, promotional purposes, raising of capital, recommending investments, sale of securities, or in any way that implies endorsement by Battelle or Client.

11. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and not an employee, agent, or representative of Battelle. Subcontractor shall be solely responsible for all employment-related wages, benefits, FICA, federal and state unemployment and other taxes and payments as required by law, for itself and any persons it employs. Subcontractor shall be solely responsible for its own financial obligations to third parties and to its employees and contractors. Further, Subcontractor agrees that it shall not be covered by any Battelle insurance or benefits. Subcontractor shall indemnify, defend, and hold Battelle and its officers, directors, agents, and employees harmless from any claims, actions, assessments, and damages including, but not limited to, reasonable attorneys' fees, interest, and penalties asserted or assessed against Battelle and its officers, directors, agents, and employees by any person or governmental entity relating to Subcontractor's responsibilities under this clause.

12. CONFIDENTIALITY

Subcontractor agrees to keep confidential the existence and terms of any PO and/or SOW and similar documents such as a task order, any information or material obtained by Subcontractor or of which Subcontractor may become aware in its performance hereunder, and work product and deliverables which Subcontractor conceives or creates for Battelle (the "**Confidential Information**"). Subcontractor shall not use such Confidential Information for any purpose other than to perform its obligations hereunder, nor disclose Confidential Information to any third parties without Battelle's prior written consent. Subcontractor shall be responsible for ensuring its personnel and third parties under contract with Subcontractor comply with the terms of this clause. Subcontractor shall protect the Confidential Information to the same standard of care it uses to safeguard its own confidential information, but not less than a commercially reasonable standard of care. These obligations with respect to handling Confidential Information do not apply to: (i) Information in the public domain through no fault of Subcontractor; (ii) Information already lawfully known to Subcontractor outside of Battelle's disclosure; and (iii) Information lawfully received from other sources, without a breach of this Confidentiality clause. Any combination of information shall not be considered public merely because individual elements thereof are in the public domain unless the combinations and its elements are in the public domain. Upon request at any time and at the expiration or termination of any PO and/or SOW or similar document such as a task order, Subcontractor agrees to return to Battelle all items furnished by Battelle or developed by Subcontractor during or as a result of Subcontractor's performance hereunder, which are the sole property of Battelle.

13. COMPLIANCE WITH LAWS

Subcontractor agrees to comply with all applicable laws, orders, rules, regulations, ordinances and ethical and professional standards of behavior and conduct. Without limiting the foregoing, Subcontractor specifically acknowledges the importance of strict adherence to those laws and professional standards related to doing business with the Government, adhering to ethical business practices, complying with anti-fraud requirements and assuring scientific integrity. Subcontractor shall procure all licenses/permits, pay all fees and other required charges, and shall comply with all applicable guidelines and directives of any local, state and/or federal governmental entity. Subcontractor shall indemnify, defend, and hold harmless Battelle and its officers, directors, agents, and employees harmless from any claims, actions, assessments, and damages including, but not limited to, reasonable attorneys' fees, interest, and penalties asserted or assessed against Battelle and its officers, directors, agents, and employees by any person or governmental entity relating to any failure by Subcontractor to comply with this clause.

14. INSURANCE

- a) Unless the Government Prime Contract contains a specific Government Clause regarding insurance, Subcontractor shall purchase and maintain, at its own expense, insurance in amounts reasonable and customary for the industry in which Subcontractor is engaged. Subcontractor shall maintain all insurance which is required by any law, statute, ordinance or regulation of any jurisdiction having authority in whole or in part over the Subcontractor's operations or subcontract activities, including without limitation any non-United States jurisdictions. Notwithstanding the foregoing, the following minimum insurance coverage shall be maintained:

	<u>Coverage</u>	<u>Limits</u>
(i)	Workers' Compensation	Statutory
(ii)	Employer's Liability	\$1,000,000 per occurrence
(iii)	Commercial General Liability	\$3,000,000 per occurrence (Including Contractual and Products and Completed Operations Liability)
(iv)	Business Auto Liability	\$1,000,000 per occurrence (Owned and Non-owned)
(v)	Professional Liability Insurance (if applicable)	\$3,000,000 per occurrence
(vi)	Property Insurance	Full replacement value covering any and all supplies and equipment owned by Battelle or Client which is under the control of Subcontractor
(vii)	Any other insurance which may be required by the Client.	

- b) The insurance coverage shall be with insurer(s) that are satisfactory to Battelle. Battelle shall be designated as an Additional Insured under the Commercial General Liability, Business Auto Liability and any umbrella coverage. Subcontractor's insurance shall be primary and non-contributing over any and all insurance that may be maintained by Battelle. Subcontractor and its insurer(s) shall waive all rights of subrogation against Battelle, its officers, directors, agents, trustees and employees. If any of the required insurance is maintained on a claims-made basis, Subcontractor shall maintain such insurance for a period of three (3) years after termination or expiration of a PO and/or SOW or similar document such as a task order.
- c) Subcontractor shall furnish to Battelle Certificates of Insurance evidencing compliance with the insurance requirements herein. These certificates shall provide for at least thirty (30) days prior notice to Battelle of any cancellation, non-renewal or material reduction of coverage. Certificates shall be provided prior to the initiation of subcontract activities and upon each renewal in subsequent periods for a period of three (3) years after termination or expiration of any PO and/or SOW or similar document such as a task order. Failure of Battelle to notify Subcontractor of any non-compliance with this clause shall not constitute a waiver of Subcontractor's obligations.
- d) Such minimum insurance limits shall not limit Subcontractor's liability under this clause.
- e) Subcontractor shall require any lower tier subcontractors to satisfy the requirements of this clause.

15. WARRANTY

- a) **Goods:** Subcontractor warrants that all goods furnished hereunder will be free from defects for a period of one (1) year from final acceptance by Battelle or for the standard warranty period provided by Subcontractor, whichever is longer, will conform with all requirements of the PO and/or SOW, and, unless manufactured solely

in accordance with Battelle-certified manufacturing designs, will be free from defects in design. The warranty period will be extended for another one (1) year or for the standard warranty period provided by Subcontractor, whichever is longer, for those goods corrected or replaced under Subcontractor's warranty. Subcontractor agrees to notify Battelle immediately upon becoming aware of a potential problem with goods previously delivered to Battelle. Such notification shall include a recommended course of action.

- b) **Services:** Subcontractor warrants that all services performed hereunder will be performed with the standard of a fully qualified professional, conform to the requirements of the PO and/or SOW or similar document such as a task order, and be performed in strict compliance with any applicable regulatory or international standards. Any services corrected or re-performed will be covered by this warranty.
- c) The warranties provided in a) and b) above shall apply unless a more extensive warranty(s) is/are specified in the Government Clauses, in which case the greater warranty shall apply.
- d) If Subcontractor breaches any warranty, Battelle may elect, at its sole discretion and with no increase in price, to:
 - (i) Require Subcontractor either to repair or replace, at Battelle's election, defective or nonconforming goods promptly; or
 - (ii) Require Subcontractor promptly to furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming goods, and equitably reduce the price to account for the cost of correction including, without limitation, removal and installation; or
 - (iii) Require Subcontractor to promptly redesign defective or nonconforming goods and require Subcontractor promptly to repair or replace goods manufactured in accordance with such defective design; or
 - (iv) Require Subcontractor either to correct or re-perform defective or nonconforming services promptly; or
 - (v) Equitably reduce the price of the goods and/or services; or
 - (vi) Correct or have corrected the nonconformity or defect at Subcontractor's expense.

16. INDEMNIFICATION

- a) Notwithstanding anything to the contrary contained herein, Subcontractor agrees to indemnify, defend and hold Battelle, its officers, directors, agents, and employees harmless from and against any and all direct losses, liabilities, damages, claims, causes of action, judgments, and all expenses and costs of any kind, including reasonable attorneys' fees arising out of: (i) issues that are caused, in whole or in part, by Subcontractor's negligence, wrongful acts, omissions, or willful misconduct or the negligence, wrongful acts, omissions, or willful misconduct of anyone employed by or under contract with Subcontractor; (ii) allegations of or actual infringement of any patent, copyright, or trademark by Subcontractor or anyone employed by or under contract with Subcontractor; and (iii) any bodily injury, property damage, or death caused, in whole or in part, by Subcontractor's negligence, wrongful acts, omissions, or willful misconduct or the negligence, wrongful acts, omissions, or willful misconduct of or anyone employed by or under contract with Subcontractor.
- b) In addition, Subcontractor agrees to hold Battelle harmless from any and all liability, claims, suits, demands, or other consequences, and all costs relating to Subcontractor's failure to provide current, complete and/or accurate cost and pricing data or relating to any improper, unallocable, unreasonable or unallowable labor or other charge(s) for which Subcontractor has requested payment or has been paid.
- c) Further, Subcontractor agrees to waive its immunity as an employer under *O.R.C. Section 4123.74 and Article 2, Section 35, of the Ohio Constitution* in order to fulfill its obligation to indemnify Battelle from claims by

Subcontractor's employees. Except for in cases of Battelle's gross negligence or willful misconduct, Subcontractor waives any and all claims against Battelle and its officers, directors, agents and employees arising out of personal injury (including death) or damage to property occurring in connection with Subcontractor's performance hereunder, including, but not limited to, claims of subrogation under *O.R.C. Section 4123* or any other section of the Ohio Revised Code or the laws of any other jurisdiction relating to workers' compensation.

17. INTELLECTUAL PROPERTY

- a) Unless otherwise expressly agreed in a PO and/or SOW or similar document such as a task order and subject to sub paragraph b) below, any inventions, concepts, computer codes, technical data, drawings, works of authorship, and other discoveries or intellectual property (collectively, "**Intellectual Property**") first made or conceived by Subcontractor in its performance hereunder or which is derived from or based on the use of information supplied by Battelle shall be the property of Battelle. Subcontractor shall execute such documents necessary to perfect Battelle's title to the Intellectual Property. Unless otherwise expressly agreed in a PO and/or SOW or similar document such as a task order and subject to sub paragraph b) below, any work performed hereunder which includes any copyright interest shall be considered a "work made for hire." Subject to sub paragraph b) below, to the extent any such works do not qualify as a "work made for hire," Subcontractor hereby assigns to Battelle all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.
- b) Government Clauses shall, when applicable, take precedence over any conflicting provision of this Section 17, to the extent that such flow down provisions so require. The incorporation by reference of such Government regulations dealing with subcontractors' rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Subcontractor may have previously granted to Battelle pursuant to prior agreements between the Subcontractor and Battelle.
- c) Nothing in these Terms and Conditions shall be construed or interpreted to limit or in any way restrict the rights of the Government in regard to data, tooling and other information it owns or has a right to use, including the right to authorize the Subcontractor's use of such data, tooling or other information in direct contracts between the Subcontractor and the Government.

18. PATENT INDEMNIFICATION

Notwithstanding anything to the contrary contained herein, Subcontractor warrants that the services performed, and goods delivered hereunder will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. In addition, Subcontractor agrees to defend, indemnify and hold harmless Battelle, its officers, directors, agents, and employees, and Client from and against any direct claims, damages, losses, costs and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the services performed and/or goods delivered hereunder infringes or otherwise violates the intellectual property rights of any person or entity. This agreement to indemnify and hold harmless for infringement claims shall not be considered an allowable cost except with regard to allowable insurance costs.

19. COUNTERFEIT PARTS

- a) For the purposes of this clause, (i) the meaning of "Counterfeit Electronic Part" and "Electronic Part" are as defined in DFAR 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System (August 2016); and (ii) "Work" means parts delivered hereunder that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies).
- b) Subcontractor warrants that the Work delivered hereunder shall not be or contain Counterfeit Electronic Parts. Subcontractor shall obtain and retain all documentation required to fully trace the distribution and sale of the Work delivered hereunder back to the relevant original manufacturer, and, on request of Battelle, shall provide such authenticating documentation. Battelle shall have the right to audit, inspect, and/or approve

Subcontractor's counterfeit parts processes and supporting documentation at any time before or after delivery of the Work ordered hereunder.

- c) Should Subcontractor become aware of a confirmed or suspected Counterfeit Electronic Part that, by any means, has been delivered to Battelle, or acquired for use hereunder whether or not delivered to Battelle, Subcontractor shall provide notification to Battelle's Procurement Representative as soon as possible but not later than seven (7) days after discovery. Subcontractor shall quarantine any suspect Counterfeit Electronic Part and make them available for investigation by appropriate government authorities.
- d) In the event Work delivered under this subcontract constitutes or includes a Counterfeit Electronic Part, Subcontractor shall, at its expense, promptly replace the Work from authorized sources conforming to the requirements hereunder. Notwithstanding any other provision herein, Subcontractor shall be liable for all costs relating to the inclusion, removal, and replacement of Counterfeit Electronic Parts, including, without limitation, Battelle's costs of removing the Counterfeit Electronic Parts, of reinserting replacement components, and of any testing necessitated by the reinstallation of components after the Counterfeit Electronic Parts have been exchanged. The remedies in this paragraph are in addition to any remedies Battelle may have at law, equity, or under other provisions of this subcontract. Subcontractor shall flow down the substance of this clause, including this sentence, in all lower-tier subcontracts related to the provision of goods and services hereunder.

20. INSPECTION

Battelle shall have the right, at all reasonable times, to inspect or otherwise evaluate the work performed or being performed hereunder. If any inspection or evaluation is made by Battelle on the premises of Subcontractor, Subcontractor must provide, and shall require all lower-tier contractors to provide, access to all reasonable facilities and assistance for the safety and convenience of Battelle representatives in the performance of their duties. Inspections and tests by Battelle do not relieve Subcontractor of its responsibility for defects or other failures.

21. ENVIRONMENT SAFETY AND HEALTH REQUIREMENTS

During its performance hereunder, Subcontractor shall comply with all applicable Federal, state, and local environment, safety, and health laws and regulations. Subcontractor shall also perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. Subcontractor shall ensure the management of environment, safety, and health functions and activities becomes an integral, visible part of the Subcontractor's work planning and execution process. Subcontractor is also responsible for its subcontractors' compliance with the environment, safety, and health requirements of this subcontract. Subcontractor shall be held accountable for a failure to maintain safety and environmental compliance.

22. EXPORT CONTROL

Subcontractor agrees that it shall comply with all United States export laws and regulations. Subcontractor agrees not to export or re-export any defense articles, products, materials, items and/or technical data, or the product(s) thereof, received from Battelle, unless Subcontractor has obtained in advance all required licenses, agreements or other authorizations from the Government. Exports of technical data include, without limitation, the sending or taking of any technical data out of the United States in any manner; disclosing or transferring technical data to a Foreign Person (i.e. any natural person who is not a lawful permanent resident of the United States or is not a protected individual as defined by 8 U.S.C. Sections 1101 and 1324, any corporation or other entity that is not incorporated or organized to do business in the United States, and any international organizations, foreign governments and agencies or subdivisions of foreign governments including diplomatic missions) whether in the United States or abroad; or performing services for a foreign party, whether in the United States or abroad. Subcontractor shall obtain Battelle's written approval prior to directing, causing, or allowing any Foreign Person, including but not limited to offshore manufacturing facilities, to participate in the design, development, manufacture, fabrication or testing of items under the PO or, if applicable, in the performance of the SOW.

23. ACCESS

Subcontractor shall comply with all the rules and regulations regarding conduct, security and safety established by Battelle and/or Client for access to and activities in and around Battelle and/or Client's buildings and properties. Subcontractor also agrees that all Subcontractor's employees will execute, upon request, an access agreement permitting access to a Battelle and/or Client facility. Client-issued assets (Badges, CAC Cards, Decals, etc.), are property of the Government. Upon voluntary or involuntary termination, Subcontractor shall surrender the asset(s) to the manager, facility security officer, or person who is debriefing you. Possession and attempted use of these assets after separation with Battelle may be considered a security violation or violation of criminal law, Section 793 and/or 1924, Title 18, United States Code.

24. NOTICE OF DEBARMENT OR SUSPENSION

Subcontractor shall provide immediate notice to the applicable Battelle Procurement Representative in the event of being suspended, debarred, or declared ineligible by any agency or department of the Government, or upon receipt of a notice of proposed debarment from any agency or department of the Government, during performance hereunder.

25. ASSIGNMENT AND CONSENT TO SUBCONTRACT

Subcontractor may not assign, transfer or delegate its rights or obligations hereunder, in whole or in part, without the prior written approval of Battelle. Any assignment (or attempted assignment) in violation of this Section 25 shall be void and of no force or effect. These Terms and Conditions and any PO and/or SOW or similar documents such as a task order shall be binding upon, inure to the benefit of, and be enforceable by and against the parties, their successors, assigns and legal representatives. No portion of the services and/or goods to be supplied hereunder, other than purchase of necessary materials to be incorporated into the services and/or goods, may be subcontracted by Subcontractor, in whole or in part, without the prior written consent of the Battelle Procurement Representative. Prior written consent is not necessary if the proposed lower tier subcontractor(s) had been identified by the Subcontractor in Subcontractor's proposal submitted to Battelle prior to award of any PO and/or SOW or similar document such as a task order.

26. FORCE MAJEURE

Neither party shall be responsible to the other for its temporary non-performance or delay in performance due to any act of God, accident, strike, court order, flood, fire, act of Government, war, riots, or any other cause not within that party's reasonable control that could not be avoided through the exercise of reasonable care and diligence (a "**Force Majeure Event**"). In the event of a Force Majeure Event, then the non-performing party will: (i) promptly notify the other party as soon as practicable and take reasonable steps to resume performance as soon as possible; and (ii) not be considered in breach of this Agreement for the duration of the Force Majeure Event. In the event the Force Majeure Event continues for a period of fifteen (15) business days, Battelle may immediately terminate the applicable PO and/or SOW or similar document such as a task order by providing written notice to Subcontractor. Upon receiving such a termination notice, Subcontractor shall follow the conditions set forth in Section 28.

27. STOP WORK

Battelle shall have the right to issue a stop work notice in accordance with the procedures set forth in FAR 52.242-15 or any referenced language in the Government Clauses. In the referenced clause(s), "Contracting Officer" shall be the Battelle Procurement Representative and "Contractor" shall be the Subcontractor herein.

28. TERMINATION FOR CONVENIENCE

- a) Battelle may immediately terminate part or all of any PO and/or SOW for its convenience by giving written notice to Subcontractor. In the event Battelle terminates for its convenience after performance has commenced, Battelle will compensate Subcontractor for the actual, allowable, and reasonable expenses incurred by Subcontractor for work in process up to and including the date of termination provided Subcontractor has used reasonable efforts to mitigate Battelle's liability.
- b) Upon termination, in accordance with Battelle's written direction, Subcontractor will immediately: (i) cease work; (ii) prepare and submit to Battelle an itemization of all completed and partially completed deliverables and services; (iii) deliver to Battelle deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the relevant PO and/or SOW or similar document such as a task order; (iv) deliver upon request any work in process; and (v) take reasonable steps to mitigate costs and/or damages caused by the termination.
- c) In no event shall Battelle be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total PO and/or SOW or similar document such as a task order's price. Subcontractor's termination claim must be submitted within ninety (90) calendar days from the effective date of the termination; claims submitted after this date will not be paid by Battelle.
- d) Subcontractor shall continue all work not terminated by Battelle.

29. TERMINATION FOR DEFAULT

- a) Battelle, by written notice, may immediately terminate any PO and/or SOW or similar document such as a task order for default, in whole or in part, if Subcontractor: fails to comply with any of the material terms of a PO and/or SOW or similar document such as a task order; fails to make progress so as to endanger performance of a PO and/or SOW or similar document such as a task order; fails to provide adequate assurance of future performance; or becomes insolvent or makes a general assignment for the benefit of creditors.
- b) Battelle, at its discretion, may require Subcontractor to deliver to Battelle any services and goods, or other items that Subcontractor has specifically produced or acquired for the terminated portion of the PO and/or SOW or similar document such as a task order. Subcontractor shall only be compensated for the services and goods requested and accepted by Battelle. Subcontractor shall not be entitled to termination claim amount other than for services and goods requested and accepted by Battelle.
- c) Subcontractor shall continue all work not terminated.
- d) Subcontractor shall be liable to Battelle for cover costs, in addition to Battelle's other rights and remedies at law or in equity.
- e) If after termination under sub paragraph a) above, it is determined that Subcontractor was not in default, such termination shall be converted to a Termination for Convenience in accordance with Section 28.

30. DISPUTES

Until final resolution of any dispute hereunder, Subcontractor shall diligently proceed with the performance of all PO's and/or SOW's or similar document such as a task order as directed by Battelle. Subcontractor must raise a dispute within one (1) year of its accrual.

31. APPLICABLE LAW

This Subcontract shall be construed in accordance with the laws and enforced within the jurisdiction of the State of Ohio, without regard to its principles of conflicts of law with the expectation that the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-

judicial agencies of the Government, shall be used to construe and interpret any Government contract clauses and certifications.

32. RIGHTS AND REMEDIES

The rights and remedies of Battelle set forth in this subcontract are cumulative and are in addition to any other rights or remedies that Battelle may have at law and/or in equity. A party's failure to enforce any rights under this agreement will not be deemed to be a waiver of that party's rights.

33. DISCLAIMER OF CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY

NEITHER PARTY SHALL HAVE ANY LIABILITY OF ANY TYPE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF OPPORTUNITY, OR LOSS OF REVENUE OR PROFIT ARISING OUT OF OR RELATED TO ANY PO AND/OR SOW OR SIMILAR DOCUMENT SUCH AS A TASK ORDER OR THE SERVICES AND GOODS PROVIDED HEREUNDER. EACH PARTY IS RESPONSIBLE FOR ITS OWN ACTS AND OMISSIONS AND THE RESULTS THEREOF AND SHALL NOT BE RESPONSIBLE FOR THE ACTS AND OMISSIONS OF THE OTHER PARTY. BATTELLE'S TOTAL CUMMULATIVE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PROPERLY DUE AND OWED TO SUBCONTRACTOR UNDER A PO AND/OR SOW OR SIMILAR DOCUMENT SUCH AS A TASK ORDER REGARDLESS OF THE CAUSE OF ACTION OR THEORY OF LAW ASSERTED.

34. CLOSEOUT ACTIONS AND REPORTS

- a) **Final Invoice.** Subcontractor shall submit a final invoice, marked or stamped "Final," promptly upon completion of its work, but no later than ninety (90) days from the subcontract or task order completion date. A longer period may be approved by Battelle upon written application by the Subcontractor stating good and sufficient reason why such extension is necessary.

Upon approval of Subcontractor's final invoice, and Subcontractor's compliance with all terms and conditions of the PO and/or SOW or similar documents such as a task order and this provision, Battelle shall pay within forty-five (45) days the balance of allowable costs and that part of the fee (if any) not previously paid. In no event will payment be made until an acceptable final invoice and all required closeout information listed in sub paragraph b) below has been received.

- b) **Required Closeout Information.** Within the same time period as submission of its final invoice, or within thirty (30) days of a request from Battelle, Subcontractor shall complete and return to the applicable Battelle Procurement Representative the following documentation:

- Property Closeout Certificate
- Report of Inventions and Subcontracts
- Quick Closeout
- Release of Claims and Assignment of Refunds, Rebates and Credits

The above documentation is available at the "Doing Business with Battelle" page of the Battelle.org website, and it is the Subcontractor's responsibility to obtain and correctly complete and sign the necessary certificates.

- c) **Quick Closeout.** The Subcontractor agrees that, if so requested by Battelle, the Quick Closeout procedure authorized by FAR 42.708, or any deadline stated in the referenced language in the Government Clauses, or as required by Battelle's prime contract with its Client, shall be the basis for closing any PO and/or SOW or similar documents such as a task order, as applicable, and shall return the Quick Closeout Questionnaire, as provided to Subcontractor by Battelle, within thirty (30) days after the date of Battelle's request. In addition to the above, Subcontractor agrees, pursuant to FAR 42.708(a), to the Quick Closeout procedure if the amount of unsettled indirect costs, including indirect costs allocable to materials as described in FAR 52.232-7(b)(5), is less than \$1,000,000 USD or 10 percent of the total contract, task order, or delivery order amount.

- d) **Unilateral Closeout.** Pursuant to and consistent with the provisions of FAR Clauses 42.705 and 52.216-7, unilateral closeout will occur in the event Subcontractor fails to submit the closeout information required in sub paragraphs (a) and (b) within one hundred twenty (120) days of a PO and/or SOW or similar documents such as a task orders' expiration date unless such failure is due to (i) the Government's pending settlement of Subcontractor's final indirect rates and Battelle has not requested Quick Closeout as per sub paragraph c) above, or (ii) an extenuating circumstance is present as agreed upon in writing by Battelle and Subcontractor. Such failure shall constitute Subcontractor's express agreement that the amounts paid pursuant to a PO and/or SOW or similar documents such as a task order, as applicable, by Battelle to Subcontractor up to the date Subcontractor's submissions are due as set forth herein and as determined by the Battelle records, constitute the full, complete and final extent of Battelle's financial obligation to Subcontractor. Further, Subcontractor does forever fully and finally remise, release and discharge Battelle, its officers, directors, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising under or relating to a PO and/or SOW or similar documents such as a task order, and Subcontractor expressly authorizes Battelle to rely on the foregoing representations and release in connection with the closeout of or other actions taken with respect to Battelle's contract with the Government.
- e) **Refunds, Rebates, and Credits.** Subcontractor shall pay to Battelle any refunds, rebates, credits or other amounts (including interest, if any) accruing to or received by Subcontractor or any assignee under a PO and/or SOW or similar documents such as a task order to the extent that those amounts are properly allocable to costs for which Subcontractor has been reimbursed by Battelle. Reasonable expenses incurred by Subcontractor for securing refunds, rebates, credits or other amounts shall be allowable costs if approved by Battelle.

35. AUDIT

- a) During the term of any PO and/or SOW or similar documents such as a task order, or for three (3) years following the completion or termination of any PO and/or SOW or similar documents such as a task order, Battelle and/or, if applicable, any cognizant government audit agency, shall have access to Subcontractor's records and documentation for audit purposes during normal business hours and upon ten (10) calendar days' notice. Subcontractor shall promptly reimburse Battelle for any amounts for which Subcontractor cannot provide adequate documentation or substantiation or are otherwise unallowable or not properly chargeable.
- b) If Subcontractor is subject to the audit requirements of OMB Circular A-133, Subcontractor agrees to comply with those requirements. Upon completion of its required audit, Subcontractor agrees to provide Battelle with a copy of the audit report and disclose any adverse findings which may impact a PO and/or SOW or similar document such as a task order.
- c) Subcontractor shall comply with DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, and any other cybersecurity requirements applicable to this subcontract. Battelle reserves the right to audit and assess Subcontractor's compliance with DFARS 252.204-7012, NIST SP 800-171 requirements, and any other cybersecurity requirements applicable to this subcontract. Failures by Subcontractor to comply with these requirements shall constitute a material breach of any PO and/or SOW or similar document such as a task order.

36. SURVIVAL

If a PO and/or SOW or similar document such as a task order expires, is completed, or is terminated, Subcontractor shall not be relieved of those obligations contained in the following provisions: 1, 2(c), 10-18, 22, and 30-37.

37. NO WAIVER; SEVERABILITY

Failure of Battelle to insist on strict performance of any of these Terms and Conditions or those that may be mutually agreed in any PO and/or SOW or similar documents such as a task order shall not constitute or be construed as a waiver or relinquishment of Battelle's right to subsequently require strict compliance with such terms and conditions. No course of dealing or usage of trade shall be construed to modify or otherwise alter any of these Terms and

Conditions or those that may be mutually agreed in any PO and/or SOW or similar documents such as a task order. If any provision of a PO and/or SOW or similar document such as a task order shall for any reason be prohibited, held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect or invalidate any remaining provisions and no such prohibition or unenforceability in any jurisdiction will invalidate such provision in any other jurisdiction.

38. ORDER OF PRECEDENCE

In the event of any conflict between these Terms and Conditions and any PO and/or SOW or similar document such as a task order, these Terms and Conditions will govern, except in cases where the parties have mutually agreed to different term(s) and have expressly identified such term(s) in a PO and/or SOW or similar documents such as a task order as controlling. Any change, amendment or modification to this Agreement must be in writing and signed by an authorized representative of each party.

39. ENTIRE AGREEMENT

These Terms and Conditions including any PO and/or SOW or similar document such as a task order represent the entire agreement of Battelle and Subcontractor and supersede any prior discussions or understandings, whether written or oral, relating to the subject matter hereof.