

## **CONSORTIUM MEMBER AGREEMENT**

Agreement between the  
SENSORS, COMMUNICATIONS  
AND ELECTRONICS CONSORTIUM (SCEC) and its Members

Concerning

Support of the U.S. Army Communications-Electronics Research, Development and Engineering Center, Night Vision and Electronic Sensors Directorate (NVESD) (CERDEC) and its research, development, and follow-on production efforts under an Other Transactions Agreement for Prototyping (W909MY-18-9-001) as established between the SCEC and CERDEC

Effective Date: 20 FEB 2018 Ammended 20 June 2018

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# CONSORTIUM MEMBER AGREEMENT

## PREAMBLE

This Consortium Member Agreement (the "Agreement") is dated as of 20 FEB 2018, as amended, by and between the SENSORS, COMMUNICATIONS AND ELECTRONICS CONSORTIUM (SCEC) referred to herein as "SCEC" or the "Consortium," and the Consortium Members (as defined herein).

WITNESSED

WHEREAS, SCEC has entered into an Other Transactions Agreement (the "OT Agreement" or "OTA") with the U.S. Army Communications-Electronics Research, Development and Engineering Center, Night Vision and Electronic Sensors Directorate (NVESD) (CERDEC) for funding certain research and development leading to technology demonstrations and deployment, independently or in partnership with the CERDEC to conducting research and development in cooperation with the Government leading to technology demonstrations and prototype projects in sensors, communications and electronics sciences and other related fields to enhance the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improve platforms, systems, components, or materials in use by the armed forces.

WHEREAS, the Consortium Members wish to ensure quick and efficient delivery of critical technologies to enhance the capabilities of the U.S. Government and its departments and agencies through the conduct of research, development, and testing in cooperation with the Government, leading to technology demonstrations and prototype projects in the sensors, communications and electronics sciences and other related fields to maintain and improve Warfighter command, control, communications, computer, intelligence, surveillance and reconnaissance capabilities in complex environments.

WHEREAS, the Consortium Members concurrently wish to develop, sustain and expand their collective strategic technical superiority in developing and producing new sensors, communications and electronics, devices and products;

WHEREAS, the Consortium Members wish to develop, execute and sustain a flexible, multi-year Research, Development and Technology Program clearly defining performance goals, and maximizing the collective capabilities of Government, industry and academia to focus those capabilities toward attaining sound mission technology solutions;

WHEREAS, the Consortium Members wish to define programs and obtain program funding that is focused on adapting, developing, demonstrating and transitioning mission-critical technologies in support of national goals and objectives to enhance the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improve platforms, systems, components, or materials in use by the armed forces.

WHEREAS, SCEC and the Consortium Members are entering into this Agreement in order to

- a) support the establishment and growth of SCEC as a consortium to conduct sensors, communications and electronics research, development and technology programs,
- b) transition requirements from research to production and commercialization,
- c) adapt commercial developments to new requirements from the Government,
- d) provide for their respective rights and obligations as Consortium Members, and
- e) provide guidance with respect to other matters involving the activities conducted by Consortium Members.

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

## ARTICLE I –DEFINITIONS

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

1.2 "Additional Consortium Members" means the Consortium Members who become signatories or otherwise join as a party to this Agreement after the Effective Date pursuant to the procedures set forth herein and in OT Agreement(s) between the Consortium and the CERDEC NVESD.

1.3 "Agreement" means this Consortium Member Agreement.

1.4 "Committees" means the committees established by the Consortium in coordination with the Government as soon as practical after the effective date of the OTA to receive guidance, develop/recommend research initiatives, identify educational and training programs, interface with key Government organizations to identify emerging technology needs, and discuss Government intellectual property opportunities and member products and innovations that may be of interest to the Government. The committees will have membership and leadership from the Consortium Members.

1.5 "Consortium Member Agreement" means this Agreement governing the rights and obligations of the Consortium Members as they relate to SCEC and to each other.

1.6 "Consortium Member" or "Consortium Members" means the individual organizations that are or become signatories to this Agreement either as Consortium Members or as Additional Consortium Members.

1.7 "Department of Defense (DoD) Component" means the Office of the Secretary and its subordinate organizations and laboratories and the Department of the Army, the Department of the Navy, the Department of the Air Force and their respective commands and laboratories.

1.8 "Effective Date" means the date first written above and on which this Agreement was approved by the SCEC Board.

1.9 "Field" means the field of sensors, communications and electronics sciences and related fields as applied to Warfighter command, control, communications, computer, intelligence, surveillance and reconnaissance capabilities in complex environments.

1.10 "Government" means the United States of America herein represented by the ACC APG Belvoir on behalf of USARMY CERDEC NVESD.

1.11 "SCEC" or "Consortium" has the meaning set forth in the first paragraph of this Agreement.

1.12 "Member in Good Standing" means being current (no greater than 45 days past due) on membership dues and current (no greater than 90 days past due) on research project award assessments.

1.13 "SCEC Base Agreement" means the agreement between SCEC and the Consortium Member organization or a team of Consortium Member entities, under the terms of the OT Agreement between the SCEC and the Government, which serves as the baseline agreement for all future SCEC Research Project Awards. The SCEC Base Agreement, among other things, flows down applicable terms and conditions from the OTA.

1.14 "SCEC Research Project Awards" refers to agreements issued by SCEC, under the terms of a SCEC Base Agreement, for executing a specific SCEC research project.

## ARTICLE II –THE CONSORTIUM

2.1 Background. The Government has expressed a desire to establish an enterprise partnership with an industry and academia consortium to facilitate to technology demonstrations and prototype projects in sensors, communications and electronics sciences and other related fields to enhance the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of

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Defense, or to improve platforms, systems, components, or materials in use by the armed forces. In response to the Government's desire, SCEC was formed as an unincorporated consortium operating through a consortium manager SOSSEC Inc. All agent-related management functions contained in this agreement, will be hereafter transferred to SOSSEC Inc. and executed by SOSSEC Inc. as the sole agent of the SCEC Consortium to the Sponsor(s) with the following objectives:

- a) sensors, communications and electronics research and prototyping;
- b) exploration of private sector technology opportunities;
- c) technology transfer; and
- d) deployment of intellectual property and follow-on production.

It is anticipated that the SCEC entity through its agent, SOSSEC Inc. will contract with the Government using an OTA authorized under 10 USC 2371, as amended. Through this OTA, the Government, SCEC and the Consortium Members will conduct research and development in cooperation with the Government leading to technology demonstrations and prototype projects in sensors, communications and electronics sciences and other related fields to enhance the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improve platforms, systems, components, or materials in use by the armed forces

2.2 Consortium Member Agreement. This Agreement between the Consortium and Consortium Members shall govern the relationships and interaction between the Consortium and Consortium Members, and among the Consortium Members. All Consortium Members must meet the basic requirements outlined in Article III of this Agreement. Membership is further contingent upon prospective members agreeing to and signing this agreement and the Consortium Membership Application (attached to this Agreement as Exhibit A).

2.3 Objectives of the Consortium. The following are the specific objectives of the collaborative effort between the Members and the Government:

- a) Research and prototyping to support USARMY CERDEC NVESD requirements;
- b) Exploration of promising private sector technology opportunities, to include investing in small companies that are developing promising technologies;
- c) Providing funding for critical studies that may attract other investors;
- d) Deployment of Government intellectual property;
- e) Procurement and production of military stocks, to include additional testing and modification needed to meet military requirements; and
- f) Pursuit of funds from financially sound strategic partners and investors in furtherance of the SCEC mission and objectives.

2.4 Scope of the Research Effort. The following are examples of the technology areas of the collaborative efforts between the SCEC, Consortium Members and the Government:

- a) Assured Positioning, Navigation and Timing (PNT)
- b) Cyberspace Operations
- c) Electronic Warfare (EW)
- d) Mine, IED and Minefield Detection and Defeat
- e) Intelligence, Analysis, Exploitation and Dissemination
- f) Intelligence, Surveillance, Reconnaissance and Targeting (ISR&T)
- g) Mission Command Capabilities and Computing Platforms
- h) Tactical and Deployed Power
- i) Tactical and Strategic Networks

The Government may provide specific technical objectives from time-to-time.

2.5 Benefits of Consortium Membership. SCEC has been organized and will be operated to provide the following benefits to member organizations:

- a) Consortium members will have access to information concerning Government technology requirements which may

not be available to non-members. In addition to promoting information exchange with Government attendees at SCEC general membership meetings, SCEC officers and staff will work to foster discussions between the Government and consortium members on a case-by-case basis.

- b) The SCEC officers and staff will provide a forum for conducting emerging technology discussions among member organizations, and report the results of such discussions back to the Government to help shape the requirements the Government may publish in a subsequent research announcement.
- c) USARMY CERDEC NVESD and other federal agencies may use the OTA vehicle to fund certain research and development programs. Only consortium members will be eligible to bid and receive awards for such programs funded through the OTA.
- d) The SCEC management team will facilitate interactions between and among consortium members so that proposals can be more collaborative and more closely aligned with specific Government requirements. Such collaboration should increase the potential for an award.
- e) The SCEC management team will engage industry to gain a better understanding of their metrics for the technology areas being funded, thereby presenting a research target for consortium members that would facilitate greater technology transfer opportunities.
- f) The SCEC management team may maintain access to intellectual property rights professionals who could assist in licensing agreements and royalty valuation as desired by consortium members.

## ARTICLE III – CONSORTIUM MANAGEMENT AND ADMINISTRATION

3.1 Organization and Administration. SCEC is organized and administered as an unincorporated consortium. The business and affairs of the Corporation shall be managed by the SCEC Board of Directors (hereinafter SCEC Board) through their Consortium Administration Organization (CAO) SOSSEC Inc. . The SCEC Board has the authority to make and alter the SCEC CMA and to elect a President and other officers of the consortium who will carry out the orders, resolutions and other executive, supervisory and management functions as authorized by the SCEC Board as well as administer the CAO.

3.1.1 The SCEC Board may establish an Executive Committee.

3.1.2 The SCEC Board may authorize and establish additional committees of the SCEC Board with such powers and duties as may be deemed necessary and advisable in conducting the business activities and affairs of SCEC. Such committees, if formed and so authorized by the SCEC Board, will work in conjunction with USARMY CERDEC NVESD to identify, improve and expand synergies for rapidly developing and transitioning critically needed (and cost-effective) technology in the Field. Membership on such committees shall be governed by the SCEC.

3.2 Consortium Membership Requirements. Membership in the Consortium shall be granted to qualified firms and institutions organized or existing under the laws of the United States, its territories, and possessions operating in the disciplines of sensors, communications and electronics technology outlined in Article II. The SCEC Executive Director shall determine whether an applicant is eligible for membership, and must approve the application. Consortium Members must comply with this Agreement, the OTA and all applicable federal laws, rules and regulations. The membership application and approval process will be open to prospective members throughout the year. The Consortium Membership Application is attached to this Agreement as Exhibit A.

The SCEC Executive Director will maintain a current membership list and will make it available on a Consortium website as additional members join the Consortium. The Consortium will be open to and include Members from industry, academic research institutions, and

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nonprofit and not-for-profit organizations. SCEC adopts a non-exclusive, open membership policy. The Consortium will recruit additional Members in accordance with the provisions contained in this Agreement and in the OTA. The SCEC Executive Director will notify the Government of the addition or deletion of Members. Any Member, regardless of when they join the SCEC, shall enjoy the same rights and incur the same obligations as any other Member hereunder. All members in good standing are eligible for nomination to the SCEC Board of Directors and/or Committees established by the SCEC Board. Each Consortium Member shall have only such rights as may be expressly set forth in this Agreement.

3.2.1 Foreign Organizations. Membership eligibility for any agency or instrumentality of a foreign government and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, shall be decided on a case-by-case basis at the sole discretion of the Government through the SCEC Agreements Officer (AO).

3.3 Membership Dues. Membership in the SCEC will become effective upon submission of the Consortium Membership Application and payment of the initial dues assessment. SCEC Members will pay annual dues in the amount of \$ 500.00. On a case by case basis, the SCEC Board may consider a request to waive all or part of the dues for very small, innovative organizations, and academic institutions particularly those that qualify as non-traditional government contractors. SCEC Members will pay annual dues every January 1st. New Members will pay prorated dues payable upon initial acceptance of membership and then \$500 respectively per year every January 1st thereafter.

The SCEC Board may adjust the membership dues structure from time to time to sustain the Consortium's ability to balance its revenues and expenses.

3.4 Research Project Award Assessments. In addition to any initial and annual dues that all SCEC Members are required to pay, each recipient of a research project award under the OTA shall pay SCEC an amount equal to zero to one percent (0 to 1.0%) of the total funded value of each research project award. Such deposits shall be due not later than ninety (90) days after the research project award and will be used to defray the cost of operating the Consortium. Members who have not paid the assessment or dues within ninety (90) days of the due date are not "Members in good standing" for additional research project awards, or for participation in general or committee meetings or otherwise until the delinquency is cured.

The SCEC Board may adjust the assessment percentage from time to time to sustain the Consortium's ability to balance its revenues and expenses.

3.5 Additional Payments. RESERVED

3.6 Membership Meetings and Meeting Attendance. General bi-annual meetings of the Consortium membership will be held in locations designated by the SCEC in coordination with the USARMY CERDEC NVESD. The purpose of these meetings is to bring together Consortium Members and Government research directors so that

- a) the technical requirements of the Government may be presented,
- b) the Consortium Members may network and form teams to respond to the Government's requirements with innovative ideas, solutions and technologies, and
- c) other business may be conducted, as appropriate. Special meetings of the Members, for any purpose or purposes, may be called at any time by the SCEC President.

Attendance at general and special meetings is not mandatory, but all Consortium Members are encouraged to attend.

3.7 Consortium Member Voting Rights. Each Consortium Member shall be entitled to one vote on each matter submitted to a vote of the Consortium Members. Only Members in good standing may vote.

3.8 Members Bound by Agreement. SCEC and the Consortium Members agree to be bound by the terms of this Agreement and the OT Agreement.

3.9 Consortium Member Right to Withdraw. Notwithstanding the foregoing, any Consortium Member shall have the right to withdraw pursuant to Article VI of this Agreement, Withdrawal of Consortium Members.

## ARTICLE IV – PROPRIETARY INFORMATION

All members must execute a Proprietary Information Exchange Agreement as a condition for membership. The Proprietary Information Exchange Agreement is attached as Exhibit B.

## ARTICLE V – EXPORT CONTROLS

5.1 Export Controls.

The Members shall comply with all applicable export control laws and regulations of the United States, including the Arms Export Control Act ("AECA"), the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR"), and other U.S. government directives related to export control. No Member shall export or re-export any information, data, technical know-how, products, goods or related services ("Controlled Items") under this Agreement in violation of the AECA, ITAR or EAR. No Member shall disseminate any Controlled Item to a foreign person (as defined in the ITAR), or to persons and affiliated entities of foreign governments, foreign government agencies or foreign organizations, under this Agreement in violation of the AECA, ITAR or EAR. No Member shall disseminate any Controlled Item to any person or affiliated entity of a person or entity named on the U.S. Department of Treasury Denied Parties List, the U. S. Department of Commerce Unverified List, the U. S. Department of Commerce Entity List or any other U.S. government list of persons or entities under this Agreement to which dissemination of Controlled Items shall not be made.

## ARTICLE VI – WITHDRAWAL OF CONSORTIUM MEMBERS

6.1 Voluntary Withdrawal. A Consortium Member may voluntarily withdraw from this Agreement at any time and for any or for no reason by notice of withdrawal given by such Consortium Member to the SCEC and the other Consortium Members in accordance with paragraph 11.7

6.2 Involuntary Withdrawal. If a Consortium Member materially breaches any material warranty, term, or condition of this Agreement, and fails to remedy such material breach within thirty (30) days or as mutually agreed after receipt of notice of such material breach from another Consortium Member and/or the SCEC, the Consortium shall have the right to cause the involuntary withdrawal of such Consortium Member, such withdrawal to be effective immediately upon delivery of a notice from the SCEC to such Consortium Member indicating their election to cause such involuntary withdrawal to occur.

6.3 Effect of Withdrawal.

6.3.1 Rights of a Consortium Member. Except for the rights and obligations pursuant to specific intellectual property agreements between or amongst the Consortium Members, from and after the effective date of withdrawal of a Consortium Member, such Consortium Member shall cease to have any rights or obligations as a Consortium Member under this Agreement except for outlined in the Proprietary Information Exchange Agreement

6.3.2 Continued Funding and Technology Contribution Commitment. In the event of the withdrawal of a Consortium Member pursuant to this Article, such Consortium Member's rights and obligations pursuant to any executed SCEC Research Project Awards, including but not limited to, continued funding and technology contribution commitments shall continue in accordance with the specific terms and schedule of the SCEC Research Project Award under the OT Agreement to completion or until the Government, SCEC, and the Consortium Member come to agreement to terminate the Agreement, whichever is first. Should a Consortium Member receiving an award under the OT Agreement for a multi-year program of work withdraw its membership after such award, the

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withdrawing Member shall receive no funding beyond the program year in which the withdrawal of membership occurs.

## ARTICLE VII – TERM, RENEWAL, AND TERMINATION

7.1 Term. This Agreement shall continue for a period of ten (10) years from the date of execution by SCEC.

7.2 Renewal. Not later than the end of the ninth year of the OT Agreement, SCEC shall notify the Consortium Members of its intent to renew the term of this Agreement for an additional ten (10) years. SCEC and those Consortium Members agreeing to such a renewal shall enter into an appropriate amendment of this Agreement reflecting the terms to be in effect during the renewal period.

7.3 Termination of Agreement. Except for the rights, obligations, and commitments of the individual or collective Consortium Members with respect to cash, or “in-kind” contributions required by specific SCEC Research Project Awards issued under the OT Agreement, and/or specific intellectual property agreements between or amongst the Consortium Members and/or the Government, unless extended by mutual written agreement of the parties thereto, this Agreement shall automatically terminate under the following conditions:

- a) By written agreement of SCEC and the Consortium Members;
- b) After the Government’s failure to extend an applicable OT Agreement or issue a new OT Agreement to SCEC within ninety (90) days after the expiration or termination of the applicable OT Agreement.

7.4 Material Breach or Default by a Consortium Member. If a Consortium Member is alleged to have breached any material warranty, term, or condition of this Agreement, the SCEC Board of Directors shall review the facts of the alleged material breach or default and determine whether the Consortium Member has, in fact, committed such a material breach. Upon such determination that a breach has occurred, the SCEC shall notify the offending Consortium Member in accordance with the provisions of paragraph 11.7. If the Consortium Member fails to remedy such material breach within thirty (30) days or as mutually agreed after receipt of such notice of such material breach from the SCEC, the SCEC may, at its option, and in addition to any other remedies that SCEC may have in law or equity, terminate this Agreement with respect to such Consortium Member by sending a notice of termination to such Consortium Member, which will also constitute notice of involuntary withdrawal pursuant to Article VI.

7.5 Survival. Notwithstanding the above provisions, each Consortium Member’s rights and obligations with respect to Article IV and/or specific intellectual property agreements by and between the Consortium and the Consortium Member(s) shall survive any expiration or termination of this Agreement.

## ARTICLE VIII – REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of All Parties. Each Consortium Member represents and warrants to the other Consortium Members that:

- a) it is free to enter into this Agreement;
- b) in so doing, it will not violate any other agreement to which it is a party; and
- c) it has taken all action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement.

## ARTICLE IX – LIMITATION AND CROSS-WAIVER OF LIABILITY

9.1 Waiver of Liability. Consortium Members waive all claims against SCEC and against any of the entities or persons that are Consortium Members based on alleged damages relating to and arising out of activities under this Agreement. Notwithstanding the

foregoing, this waiver shall not apply to claims or damages arising from or related to Article IV.

9.2 Inapplicability. Notwithstanding the other provisions of this article, this waiver of liability shall not be applicable to:

- a) Claims between a Consortium Member and its related entities;
- b) Claims made for payment for services rendered;
- c) Claims made by a natural person, his/her estate, survivors, or subrogates for injury or death of such natural person;
- d) Claims for damage caused by willful misconduct; or
- e) Intellectual property claims.

9.3 Limitation of Liability. In no event will any party hereto be liable for any special, incidental, consequential, or indirect damages arising in any way out of this Agreement, however caused and on any theory of liability. This limitation will apply whether or not the other party or parties hereto have been advised of the possibility of such damage. Nothing in this Article shall be construed to create the basis of a claim or suit where none would otherwise exist.

## ARTICLE X – DISPUTE RESOLUTION

10.1 Dispute Resolution Process. The Consortium and Consortium Members recognize that disputes regarding certain matters may from time to time arise during the term of this Agreement, which relate to the Consortium and Consortium Members rights and/or obligations hereunder or thereunder. It is the objective of the Consortium and Consortium Members to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Consortium Members agree to follow the procedures set forth in this Article if and when a dispute arises under this Agreement. However, if an organization can provide evidence that it is prohibited from entering into binding arbitration, the dispute resolution procedures will consist of Sections 10.2 and 10.5 below.

10.2 Dispute Resolution Representatives. In the event of disputes between the Consortium and Consortium Members, or among the Consortium Members, the Consortium or Consortium Member or Members seeking to resolve such dispute will, by written notice to the other, have such dispute referred to their respective executive officers designated below or their successors, for attempted resolution by good faith negotiations within fourteen (14) days after such notice is received. The designated officers are as follows:

For a Consortium Member: Designated Senior Executive

For the Consortium: Designated SCEC Officer

In the event the designated officers are not able to resolve the dispute, either Party may at any time after the fourteen (14)-day period invoke the provisions of paragraph 10.3 hereinafter.

10.3 Alternative Dispute Resolution (ADR). Following settlement efforts pursuant to paragraph 10.2, any dispute, controversy, or claim arising out of or relating to the validity, construction, enforceability, or performance of this Agreement, including disputes relating to alleged breach or termination of this Agreement, other than disputes which are expressly prohibited herein from being resolved by this mechanism, shall be settled by binding Alternative Dispute Resolution (ADR) in the manner described below:

10.3.1 ADR Request. If the Consortium or Consortium Member or Members hereafter identified as parties, intend to begin an ADR to resolve a dispute, such party shall provide written notice (the ADR Request) to the other party informing such other party of such intention and the issues to be resolved. From the date of the ADR Request and until such time as any matter has been finally settled by ADR, the running of the time periods regarding the subject matter of the dispute contained in Article VI under which a party must cure a breach of this Agreement shall be suspended.

10.3.2 Additional Issues. Within ten (10) business days after the receipt of the ADR Request, the other party may, by written notice to the party initiating the ADR, add additional issues to be resolved.

10.3.3 No ADR of Intellectual Property or Patent Issues. Disputes regarding the ownership of, and/or rights to intellectual

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property, including the scope, validity and enforceability of patents, shall not be subject to the ADR provision in this Article, but rather submitted to a court of competent jurisdiction.

10.4 Arbitration Procedure. Any dispute or claim arising out of or in connection with this Agreement shall be finally settled by binding arbitration in accordance with the then current rules and procedures of the American Arbitration Association. The arbitration shall be conducted by three (3) arbitrators having experience with the issue under consideration, one (1) each to be appointed by the parties in dispute and a third nominated by the two (2) arbitrators so selected or, if they cannot agree on a third arbitrator, by the President of the American Arbitration Association. Such arbitration will take place at a location agreeable to the Members who are parties to the dispute. The arbitrators shall apply the law of the state in which the dispute arose to the merits of any dispute or claim, without reference to rules of conflicts of laws. Judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrators shall have no authority to award punitive or exemplary damages against any party. Nothing in this Article shall limit a party's right to seek injunctive relief with respect to a breach or threatened breach of this Agreement.

10.5 Dispute Resolution for Governmental Entities. Recognizing that many state agencies (e.g., institutions of higher education) cannot accept the binding arbitration procedure as delineated in Sections 10.3 and 10.4 above due to state law prohibitions, the dispute resolution process for these entities will be as follows:

At any time, if a dispute cannot be resolved amicably between both parties, either party may seek alternative forms of dispute resolution, such as mediation or non-binding arbitration, under circumstances agreed upon by the parties or by a court of competent jurisdiction. Each party shall bear its own cost of such dispute resolution, and both shall proceed diligently with performance of services until the dispute is resolved. Notwithstanding the above, both parties shall have available all remedies in law or in equity.

## ARTICLE XI – GENERAL PROVISIONS

11.1 Independent Contractors. The relationship of SCEC and the Consortium Members established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to

- a) give any of the parties hereto the power to direct or control the day-to-day activities of another party hereto,
- b) constitute the parties hereto as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or
- c) allow any of the parties hereto to create, discharge, or assume any obligation on behalf of another party hereto for any purpose whatsoever.

11.2 Parties Bound. This Agreement shall be binding upon and inure to the benefit of SCEC and the Consortium Members, their respective successors, assigned legal representatives and heirs.

11.3 Assignment. This Agreement may not be assigned or transferred by a Consortium Member without the prior written consent of SCEC; provided, however, that a Consortium Member may assign its rights and delegate its obligations

- a) to any affiliate of such Consortium Member (although, in the event of any such assignment and delegation, the assigning Consortium Member shall remain primarily liable for its obligations hereunder) and
- b) to a purchaser of all or substantially all of the business to which this Agreement relates of such Consortium Member by merger, sale of assets or otherwise.

If the Consortium Member, after the assignment or purchase, cannot meet the requirements for Consortium Membership as set forth herein,

the Consortium Member will be considered to have voluntarily withdrawn from the Consortium in accordance with Article VI hereof.

11.4 Entire Agreement. This Agreement, and the attached Exhibits A and B constitute the entire and only agreement between SCEC and the Consortium Members relating to the subject matter hereof, and all prior negotiations, representations, agreements and understandings are superseded hereby.

11.5 Further Assurances. At any time, or from time to time after the date of this Agreement, a Consortium Member shall, at the request of SCEC or any Consortium Member,

- a) execute, and deliver or cause to be delivered, all such assignments, consents, documents or further instruments of transfer or license, and
- b) take or cause to be taken all such other actions, as any Consortium Member may reasonably deem necessary or desirable in order for the Consortium Member to obtain benefits of this Agreement and the transactions contemplated hereby to which the Consortium Member may be entitled.

11.6 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and

- a) personally delivered;
- b) mailed, postage prepaid, first class, certified mail, return receipt requested;
- c) sent, shipping prepaid, return receipt requested by national overnight courier service; or
- d) sent by electronic mail.

Any notice or other communication given by personal delivery shall be deemed given on the date personally delivered; any notice or other communication given by mail shall be deemed given five (5) days after the date deposited in the United States mail; any notice or other communication given by national overnight courier service shall be deemed given on the next business day after being sent; and any notice given by electronic mail shall be deemed given on the day sent.

11.7 Amendments. No amendment or modification of this Agreement shall be valid unless approved by the SCEC Board and executed by SCEC. Any amendment or modification so approved and executed shall be binding on all parties hereto, including any party who objects to or votes against such amendment in a referral to the membership in accordance with the following sentence. The SCEC Board may, at its discretion, but shall not be required to, refer certain proposed amendments to the full SCEC membership for validation by a majority vote of the membership (but no such validation shall be required, even when a proposed amendment is so referred). In the event that a Member is unable or unwilling to accept amendments to this Agreement, such Member may withdraw from the Consortium in accordance with Article VI. All proposed amendments to this Agreement shall be distributed to the SCEC Board Members at least thirty (30) days prior to the proposed effective date.

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

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

11.10 Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severance of any provision shall be effective if the result of such materially changes intended purposes of this Agreement to the parties.

11.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All Consortium Members shall receive a copy of this executed Agreement and any amendments thereto, with originals to be retained by SCEC.

# CONSORTIUM MEMBER AGREEMENT

11.12 No Third Party Beneficiary Rights. SCEC and the Consortium Members agree and acknowledge that the Government is not intended to be, and shall not constitute, a third-party beneficiary of this Agreement, which is intended exclusively as an agreement among, and for the benefit of SCEC and the Consortium Members.

11.13 Force Majeure. No failure or omission by SCEC or the Consortium Members in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same shall arise from any cause or causes beyond their control, including, but not limited to, the following: acts of God; acts or omissions of any Government; any rules, regulations or orders issued by any Governmental authority or by any officer, department, agency or instrumentality thereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion and provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable after the occurrence of one or more of the above-mentioned causes.

11.14 Order of Precedence. In the event of any inconsistency between the terms of this Agreement and the terms set forth in a prototypes OT Agreement, the inconsistency shall be resolved by giving precedence in the following order: (1) the SCEC Research Project Award and applicable Statements of Work, drawings and specifications, (2) the prototypes OT Agreement, and (3) this Agreement.

11.15 Business Development. SCEC intends to engage in business development activity on behalf of its Consortium Members. The purpose of such business development is to expand SCEC's visibility and availability to the Government, and to expand

membership in the Consortium by traditional and non-traditional businesses and academia. SCEC intends to facilitate the transition of technology developed by small, non-traditional or academic Consortium Members to demonstrate prototypes and achieve government approval, follow-on production, and ultimately commercialization.

**IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year set forth below. Sensor, Communications and Electronics Consortium countersignature is assumed when the Consortium Members signs the CMA below and it is accepted by the SCEC.**

**Consortium Member**

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBITS

Exhibit A	SCEC Membership Application
Exhibit B	Export Compliance Acknowledgment Form
Exhibit C	Proprietary Information Exchange Agreement
Exhibit D	SCEC Membership Application Checklist

# EXHIBIT A: SCEC MEMBERSHIP APPLICATION

## EXHIBIT A: MEMBERSHIP APPLICATION

### SCEC Membership Application

Members. This Membership Application is made by the signing organization ("Applicant") to the **Sensors, Communications and Electronics** Consortium (hereinafter SCEC) as of the date of signing by the Applicant.

Acknowledgment of Terms. Applicant hereby applies for membership in the **Sensors, Communications and Electronics** Consortium (hereinafter SCEC). Applicant acknowledges that its authorized representative has received and reviewed the Consortium Member Agreement, and any other supporting documents referenced therein. Applicant agrees to comply with all provisions in those documents, which are incorporated into and made part of this application by reference. Applicant acknowledges that the SCEC may amend any one or more of the documents from time to time in the best interests of the SCEC. Applicant will be notified of any material changes in those documents and will have an opportunity to object to such changes. Applicant further agrees that it will comply with all applicable U.S. laws, rules and regulations (including U.S. Antitrust and Export Control laws) in any SCEC activities. Applicant agrees that this Application will become a binding membership contract between Applicant and the SCEC upon acceptance by the SCEC Board of Directors and Applicant's payment of assessed dues. The SCEC Board of Directors has the right to accept or reject this application in its sole discretion if the SCEC Board of Directors determines, in good faith, that the Applicant does or does not meet the membership requirements contained in this Agreement. If membership is declined, the Applicant will be informed in writing regarding the rationale and provided an opportunity to address the issues and reapply. Upon acceptance of Applicant as a "Member in Good Standing" of the SCEC, Applicant agrees that all actions of Applicant's representatives participating in SCEC meetings and other activities will be binding on Applicant. Applicant agrees that all actions taken by it as a Member in Good Standing will be performed by a duly authorized representative of the Applicant.

Funding Qualification. Active participation in the consortium and currency of financial liability to the consortium are prerequisites for receipt of research project funding under the OT Agreement. To qualify for research project funding, the Applicant agrees to maintain its status as a "Member in Good Standing" by meeting the following criteria (note: the SCEC Board of Directors may grant waivers on a case-by-case basis): current (no greater than 45 days past due) on membership dues; and current (no greater than 90 days past due) on research project award assessments.

Representations. Applicant acknowledges that it has caused this application to be signed by its duly authorized representative. By signing this Application, Applicant certifies and represents that the information provided in the remainder of this Application and any attachments hereto is a current, complete, true and correct statement of Applicant's organizational structure and affiliations as of the date of signing. Applicant further certifies and represents that it agrees to meet all of the requirements of a "Member in Good Standing" contained herein. Applicant agrees to

disclose immediately to the SCEC any changes affecting Applicant's representation that it meets all the requirements of a Member in Good Standing. Applicant represents the following:

- It has an interest in the research and development of **sensors, communications and electronics** related technology;
- It is eligible to contract with the U.S. Government (i.e., Applicant is not debarred or suspended by the United States Government);
- It is willing to be an advocate of the Sensors, Communications and Electronics Consortium objectives as they are defined in the Consortium Member Agreement; and
- It is capable of making a technical contribution to advancing sensors, communication and electronics related technology.

Note: "Capable of making a technical contribution" is defined as entailing in-house, hands-on research and development activities that are relevant and essential to a proposed project or effort. It does not include all project, program, contract, and similar management and/or administrative functions.

**Applicant's legal corporate/organization name:**

\_\_\_\_\_

DUNS Number: \_\_\_\_\_

CAGE Code: \_\_\_\_\_

Address of Applicant's principal office:

Street Address 1: \_\_\_\_\_

Street Address 2: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Website Address: \_\_\_\_\_

**Is applicant a U.S. Company or Academic Research Institution?**

Yes  No

**Is applicant operating under Foreign Ownership, Control or Influence (FOCI)?**

Please Note: A U.S. company is considered under FOCI whenever a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable through the ownership of the U.S. company's securities, by contractual arrangements or other means, to direct or decide matters affecting the management or operations of that company in a manner which may result in unauthorized

## EXHIBIT A: SCEC MEMBERSHIP APPLICATION

access to [export controlled information] classified information or may adversely affect the performance of classified contracts. National Industrial Security Program Manual (DoD 5220.22-M, Para. 2-300a.).

Yes  No

If Yes:

a) Applicant must attach a letter from the Defense Security Service (DSS) verifying that it has an approved plan, special security agreement, or other DSS approved instrument in place for negating or mitigating the risk of foreign ownership, control or influence; or,

b) If Applicant does not have a DSS approved mitigation instrument in place, Applicant must submit a signed copy of Attachment A – Export Compliance Acknowledgment Form.

### Is Applicant currently a “Non-traditional Government Contractor”?

Yes  No

A non-traditional defense contractor means an entity that is not currently performing and has not performed, for at least the one-year period preceding the submission of its SCEC Membership Application, any contract or subcontract from the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of the Office of Federal Procurement Policy Act (Title 41) and the regulations implementing such section.

If Applicant does not want its “Non-traditional” status posted on the public website, check here:

### Membership Type:

Large Business

Single Organization Entity \*If selected, please indicate classification below

*\*Single Organization Classification:*

Small Business

Not-For-Profit

Academic Research Institution

Applicant’s designated points of contact (and address if different from above):

### Primary Point of Contact

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

Street Address 1: \_\_\_\_\_

Street Address 2: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### Business Point of Contact (if different from above)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

Street Address 1: \_\_\_\_\_

Street Address 2: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### Description of applicant’s organization and applicable Technology Areas:

The information provided below will be used to:

- record your organization’s in-house research and development capabilities relevant to sensors, communication and electronic technology and
- to upload to the Sensors, Communication and Electronics Consortium Members-Only website as a resource to facilitate teaming opportunities among the membership.

\*Note: Please limit each description area to 1,500 characters or less.

### Technology Area(s)

### Core Business Areas/Focus:

### R&D Highlights/Projects:

### Technical Expertise:

If Applicant does not want this information posted on the website, check here:

If Applicant provides permission to use organization’s information in SCEC business development efforts as outlined in the Consortium Member Agreement 11.16 Business Development, check here:

**Note:** The Applicant hereby provides written consent for the SCEC to include its name in all published Membership lists. Applicant acknowledges that it has read and understands the Consortium Member Agreement, and this application form, to which the applicant agrees to meet its obligation, in its entirety, and is undertaking and has caused this Membership Application to be signed by its duly authorized representative on the date set forth below:

### Applicant Name (Company Name):

\_\_\_\_\_

### Authorized Representative Signature:

\_\_\_\_\_

EXHIBIT A: SCEC MEMBERSHIP APPLICATION

**Authorized Representative Printed Name:**

\_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Submit the signed Membership Application and direct any questions to:**

Sensors, Communication and Electronics Consortium

c/o SOSSEC Inc.

8 Commerce Drive Suite 828

Atkinson, NH 03811

***mlevesque@sossecinc.com***

***dpaine@sossecinc.com***

# EXHIBIT B: EXPORT COMPLIANCE ACKNOWLEDGEMENT FORM

## EXHIBIT B: Export Compliance Acknowledgement Form

### **Sensors, Communications, Electronics Consortium Export Compliance Acknowledgment Form** *(Required for applicants operating under Foreign Ownership, Control or Influence)*

1. I understand that, as a member of the Sensors, Communications, Electronics Consortium (SCEC), my organization may be granted access to information that may be subject to one or more export control laws and regulations of the U.S. Government and that the information may fall under the control/ jurisdiction of either the Department of State or the Department of Commerce. This may occur through information made available through the SCEC Members-Only Web Site and/or SCEC or Government-sponsored events.

2. I understand that it is unlawful to export, or attempt to export or otherwise transfer or sell any hardware or technical data or furnish any service to any foreign person, whether abroad or in the United States (U.S.), for which a license or written approval of the U.S. Government is required, without first obtaining the required license or written approval from the department of the U.S. Government having jurisdiction.

3. I understand that, in the ITAR (§ 120.16), a foreign person means any natural person who is not a lawful permanent resident as defined by 8 U.S.C.1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the U.S., as well as international organizations, foreign governments and any agency or subdivision of foreign governments.

4. I understand that my organization is responsible for compliance with any and all U.S. Government export controls and regulations and that, if my organization violates

them, it could result, upon conviction, in severe criminal and civil penalties (including substantial fines, imprisonment, seizure of controlled products and technical data, and/or suspension/removal of export privileges) for my organization and/or individuals from my organization.

5. I further understand that sale or transfer of products or technical data to individuals, entities and countries named in the lists referenced in the Lists of Prohibited Individuals, Entities and Countries are strictly prohibited.

Applicant acknowledges that it has read and understands its export compliance responsibilities, to which the applicant agrees to meet its obligation, in its entirety, and is undertaking and has caused this Acknowledgment Form to be signed by its duly authorized representative on the date set forth below:

**Applicant Name (Company Name):**

\_\_\_\_\_

**Authorized Representative Signature:**

\_\_\_\_\_

**Authorized Representative Printed Name:**

\_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# EXHIBIT C: PROPRIETARY INFORMATION EXCHANGE AGREEMENT

## EXHIBIT C: PROPRIETARY INFORMATION EXCHANGE AGREEMENT

### PROPRIETARY INFORMATION EXCHANGE AGREEMENT

1. During the term of this Consortium Member Agreement, the Members of the Sensors, Communications, Electronics Consortium agree that they may exchange confidential or proprietary information ("Confidential Information") with Members having a need to know, for the purpose of furthering the goals of the Sensors, Communications, Electronics Consortium as defined in the Agreement. Confidential Information is defined as all confidential and proprietary information disclosed by a Member to another Member or other Members including, without limitation, information regarding existing and future technical, business and marketing plans and product strategies; cost and pricing information; employees' names, titles, job descriptions and salaries; business practices, policies, methodologies and procedures; proprietary data, data models, product designs, capabilities, specifications, program code, and software systems and processes; samples and devices; demonstrations; and/or other proprietary and/or competition sensitive information. Confidential Information also includes the identity of and the confidential and/or proprietary information of a Member's subsidiaries, affiliated companies, business partners, customers, potential customers and suppliers. The initial effective date of this Proprietary Information Exchange Agreement ("Agreement") shall be the effective date of this Consortium Member Agreement, as amended. Thereafter, this Agreement shall be effective for any new Members to the Consortium Member Agreement on the date such new Member signs the Sensors, Communications, Electronics Consortium Membership Agreement.

2. Notwithstanding that the term of this Agreement will have expired after a period of ten (10) years from receipt, each Member agrees to keep in confidence and prevent the use (except for the purposes of this Agreement) or the disclosure to any person or persons outside the receiving Member's organization, and limit the disclosure inside its organization to employees having a need to know, of all Confidential Information received under this Agreement (provided such Confidential Information is marked with a confidential or proprietary legend by the disclosing Member). The Members shall take every reasonable effort to keep properly-marked "Confidential Information" confidential. In order to be protected hereunder, data which is (i) in written form shall be clearly labeled as confidential or proprietary and receiving Members shall have no obligation regarding information which is not so labeled, and (ii) first disclosed orally or by demonstration must be identified as proprietary or confidential at the time of disclosure, and shall be reduced to writing or other tangible form, and marked as "Confidential Information," within thirty (30) days after such disclosure or demonstration. All protection and restrictions as to use and disclosure shall apply during such thirty (30) day period. Any markings, stamps or legends identifying proprietary or confidential information hereunder shall not impose any obligations on another Member inconsistent with this Agreement. Notwithstanding the foregoing, each receiving Member understands that the disclosing Member and its affiliates are

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

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

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

In addition, each Member understands and agrees that all information, ideas, suggestions and concepts of a general nature or commonly known in the industry related to the exploitation of information and entertainment through electronic multimedia and interactive products and services that may be offered in meetings, consultations or documents exchanged between the Members shall not be deemed included in the Confidential Information of any Member, and no Member shall be under any obligation to any other Member with respect to its own use thereof.

In the event a receiving Member is required to disclose a disclosing Member's properly marked Confidential Information pursuant to a final binding order of a governmental agency or court of competent jurisdiction, the

## EXIHIBIT C: PROPRIETARY INFORMATION EXCHANGE AGREEMENT

receiving Member shall give the disclosing Member reasonable notice of the pendency of such an order. Additionally, in the event that one Member is requested or required to disclose any of the Confidential Information in an investigatory, legal, regulatory or administrative proceeding, such Member will provide the other Members with prompt notice thereof so that such other Members may seek a protective order or other appropriate remedy. However, if no such order or remedy is obtained, such Member may, without liability hereunder, disclose in such proceeding that portion of the Confidential Information that its legal counsel has advised it is legally required to be disclosed.

**Applicant Name (Company Name):**

\_\_\_\_\_

**Authorized Representative Signature:**

\_\_\_\_\_

**Authorized Representative Printed Name:**

\_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## EXIHIBIT D: MEMBERSHIP APPLICATION CHECKLIST

### EXHIBIT D: MEMBERSHIP APPLICATION CHECKLIST

This checklist should be used as a guide to verify all required documents for SCEC membership are sent to [info@sossecinc.net](mailto:info@sossecinc.net).

- Signed Signature Page of the Consortium Member Agreement
- Organizational Capabilities Description of the Applicant's business as it may apply to research and development in the sensors, communications and electronics field, and any additional capabilities or interests the Applicant has that may be applicable to these technologies
- Signed Membership Application
- Signed Signature Page of the Proprietary Information Exchange Agreement
- If operating under FOCI, please submit the DSS letter approving your FOCI contractor's plan or a signed copy of the Export Compliance Acknowledgement Form