



# **National Spectrum Consortium**

## **Amended and Restated Articles of Collaboration**

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**PURPOSE**

These Articles of Collaboration (“**Articles**”) are entered into, as of October, 25, 2023 to govern the affairs of the National Spectrum Consortium (the “**Consortium**”).

WHEREAS, the affairs of the Consortium were previously governed by a certain Article of Collaboration dated March 25, 2020 (the “**Prior Agreement**”);

WHEREAS, the Executive Committee of the Members desire to enter into these Articles in order to completely amend and restate the Prior Agreement.

**WHEREAS**, the National Spectrum Consortium Members recognize that Government and industry share a common challenge of satisfying vastly increasing demand for the use of electromagnetic spectrum(s);

**WHEREAS**, the National Spectrum Consortium Members acknowledge that multiple, disconnected efforts currently are addressing this fundamental issue that hampers U.S. innovation and economic growth and hinders U.S. military operations both domestically and overseas;

**WHEREAS**, the National Spectrum Consortium desires to enter into an Other Transactions Agreement (“**OTA**”) with the U.S. Government (“**Government**”) to develop and mature technologies and support policy development to enable advanced approaches to electromagnetic spectrum use;

**WHEREAS**, the National Spectrum Consortium Members concurrently wish to sustain and expand their collective technical superiority by collaborating to provide quick and efficient delivery of critical spectrum technologies to enhance electromagnetic spectrum awareness, sharing, and use through a partnership with the Government and National Spectrum Consortium Members;

**WHEREAS**, the National Spectrum Consortium Members wish to provide a unified and compelling message regarding the strategic importance of spectrum technologies in current and future systems;

**WHEREAS**, the National Spectrum Consortium Members wish to define programs and obtain program funding that is focused on the development, demonstration and transition of key technologies that will result in current spectrum system improvements or the fielding of new systems; These technologies include but are not limited to: Electromagnetic spectrum sharing, use, and awareness, Massive Multiple Input, Multiple Output, 3D Beam-Forming, Waveform diversity, Multi-Function Radio Frequency, Cognitive Spectrum Sharing, Machine Learning, Cognitive Sensing, “Smart” Technologies, Virtual Reality, Augmented Reality, Mixed Reality, Digital Twin, Narrow Band Internet of Things, Massive Internet of Things, Critical Internet of Things, Device-to-Device Communications, Vehicular Ad-Hoc Networks, Vehicular Ad-Hoc Network Cloud, Autonomous Navigation, Wireless Software Defined Network, Network Function Virtualization, Heterogeneous Networks, Network Ultra-Densification, Next Generation Radio Access Networks, 5G, Cyber-Physical Systems;

**WHEREAS**, the OTA provides, among other things, for the grant of certain rights and obligations arising out of the research programs and projects conducted by the Government and the National Spectrum Consortium Members pursuant to these Articles;

**WHEREAS**, the National Spectrum Consortium Members are entering into these Articles in order to provide for (i) a consortium to conduct research, development, and demonstration of prototype projects and programs, (ii) their respective rights and obligations as a Member of the consortium, and (iii) administrative matters pertaining to the conduct of activities as Members of this consortium;

**WHEREAS**, each National Spectrum Consortium Member reserves their right to review and accept any government agency or department agreement specific terms prior to any active participation in any National Spectrum Consortium project described herein;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained in these Articles, the National Spectrum Consortium Members agree as follows:

**DEFINITIONS**

HEREINAFTER the following definitions apply:

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

**National Spectrum Consortium** means the National Spectrum Consortium, which is made up of consortium Members from industry, academia, non-profit organizations, and not-for-profit organizations pursuant to these Articles.

**Spectrum Technology Base Agreement** means the agreement between the National Spectrum Consortium Management Firm and the National Spectrum Consortium Member organization or a team of National Spectrum Consortium Member entities, under the terms of an agreement between the firm and the Government, which serves as the baseline agreement for all future Spectrum Technology Project Agreements. The Technology Base Agreement, among other things, flows down applicable terms and conditions from the OTA between the Government and the National Spectrum Consortium.

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

**National Spectrum Consortium Member organization(s)** means large and small businesses in accordance with the Small Business Administration business size standards (see Article 1, Annual Dues), for profit and not-for-profit entities, and academic research institutions that are or become Members in accordance with the National Spectrum Consortium Membership Agreement.

**Charter Consortium Member(s)** means those Consortium Members as set forth in Exhibit B that comprised the Steering Committee of the National Spectrum Consortium, which developed these Articles.

**Consortium Management Firm** refers to the agency acting solely on behalf of the National Spectrum Consortium (not as an agent of any individual Member) to negotiate, execute and administer the National Spectrum Consortium's efforts under an Other Transaction Agreement, herein referred to as "OTA," for this program as defined in the specific Management Services Agreement entered into between the National Spectrum Consortium and the Consortium Management Firm. The National Spectrum Consortium intends to enter into a Management Services Agreement with Advanced Technology International (ATI) to perform this role (i.e., to be the Consortium Management Firm).

**Non-traditional Government Contractor** an entity that is not currently performing and has not performed, for at least one-year prior to the date of application, any contract or subcontract for the Department of Defense

that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section. A Non-traditional Government Contractor determination can be made at the prime level, for team members, for subcontractors, and for lower tier vendors. This determination also can be made for "intra-company" business units provided the business unit makes a significant contribution to the prototype initiative (i.e., is a key participant). Examples of what might be

considered a significant contribution include supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in the performance. The National Spectrum Consortium Executive Committee, as defined below, will follow the specific guidance from the Government concerning the use of Non-traditional Government Contractors. Non-traditional Government Contractors will be required to provide a DUNS number.

**Other Transactions Agreement** means the OTA which is entered into by the Government and the National Spectrum Consortium.

**Member, or Members** means respectively an individual National Spectrum Consortium Member organization or the National Spectrum Consortium Member organizations collectively that are signatories to the National Spectrum Consortium Membership Agreement and must have a Department of Defense Joint Program Certification in accordance with DD Form 2345.

**Person** means an individual.

#### **ARTICLE 1: OBJECTIVES**

As of the Effective Date (as defined in Article 3) of these Articles, the Members hereby agree to create the National Spectrum Consortium. The National Spectrum Consortium is the result of an invitation by the Government to form a consortium comprised of traditional and non-traditional government contractors, small and large businesses, for-profit and not-for-profit entities, academic organizations, and their affiliated organizations to enter into the OTA to develop and mature technologies and support policy development to enable advanced approaches to electromagnetic spectrum use (including prototype projects). The OTA is entered into under the authority of the Department of Defense under 10 U.S.C. § 2371, Section 845 of the 1994 National Defense Authorization Act, P.L. 103-160, as amended by Section 241 of the FY 1999 Strom Thurmond National Defense Authorization Act, P.L. 105-261 and Section 822 of the FY 2002 National Defense Authorization Act, P.L. 107-107.

The National Spectrum Consortium shall operate with the following principal goals: (i) maturing technologies that assist in improved electromagnetic spectrum awareness, sharing, and use; (ii) experimentation to better inform the optimal allocation of those technologies for both public and private objectives; (iii) demonstration of new technologies to increase trust among spectrum stakeholders; and (iv) policy development to ensure technologies do not outpace the appropriate guidance for their best use. Through the National Spectrum Consortium established by these Articles, Members may propose and perform research, development and engineering activities, in cooperation with the Government, to address the Government's long range science and technology objectives.

The following are the specific objectives of the collaborative effort between the Members and the Government:

- Establish sound technical and programmatic performance goals based on the needs of the user;

- Provide a unified voice for effectively articulating the strategically important role electromagnetic spectrum technologies play in government and industry systems;
  - Collaboratively and collectively provide the Government with input and advice on non-proprietary, non-confidential technical concepts and issues;
  - Create programs and secure funding focused on developing key technologies and spectrum systems improvements;
  - Effectively develop critical technologies that can be rapidly and affordably transitioned to Government and industry end users;
- 
- Enter into an the OTA with the Government to provide the Government assistance and expertise in developing and executing nationally-focused spectrum endeavors by performing certain research and development (including prototype projects) in the various technology areas affecting electromagnetic spectrum awareness, sharing and use, to be conducted in collaboration with the Government and the Members. The Members hereby establish collaborative research efforts of limited duration to gain further knowledge and understanding of spectrum-related technologies required as more particularly described or identified in the OTA with the Government for the purposes as set forth therein.
  - Collaborate with other Government agencies or industry in order to fund the activities undertaken by the National Spectrum Consortium initially based on Federal e.g., DoD and other, funding as well as the resources and expertise of private sector participants. Given the broad range of interests in improving spectrum exploitation, funding needs may exceed the resources immediately available from the participants. Because promising new research opportunities may become evident during the course of the Consortium's activities, the Consortium commits itself to exploring and potentially employing a variety of additional sources of outside investment to accelerate and expand its operations. These activities include, but are not limited to, exploration of proposed financing models and working together to customize various models in support of the National Spectrum Consortium.

By execution of the National Spectrum Consortium Membership Agreement, each Member authorizes the Consortium Management Firm to enter into transactions on behalf of the National Spectrum Consortium with the Consortium Members that shall hereinafter be referred to in each case as a "Spectrum Technology Base Agreement."

### **Membership**

As of the Effective Date of these Articles, the Members are those Charter Members listed at Exhibit A. The Consortium Management Firm will maintain a current membership list and will make it available on a National Spectrum Consortium website as additional members join the consortium. The intent of the Members is that the National Spectrum Consortium will be open to and include Members from industry, academic research institutions, and non-profit and not-for-profit organizations. Organizations that are not capable of making a technical contribution (each a "**Non-Technically Contributing Member**"), but are able to increase the overall value proposition of the corporation may also be granted admission by the Executive Committee. Upon admission, such Non-Technically Contributing Members will be subject to the following provisions:

- a. Membership dues will be the same as that of a technically contributing member.
- b. The Non-Technically Contributing Member will be able to participate in consortium general Membership meetings.

- c. The Non-Technically Contributing Member will have access to information available to all other Member, but will not be allowed to participate in solicitations.
- d. The Non-Technically Contributing Member will not be allowed to vote or represent the corporation as a member of the Executive Committee or a member of any technical sub-committee.

The Members adopt a nonexclusive, open membership policy. The Members will include additional Members in accordance with the provisions contained in the National Spectrum Consortium Membership Agreement and in the OTA. The National Spectrum Consortium, through its Executive Director, will notify the Government of the addition or deletion of Members.

**Automatic Joint Membership.** All Members acknowledge and agree that the Consortium has created a new non-profit corporation under the laws of South Carolina named the National Spectrum Consortium, Inc. (“NSC, Inc.”) that shall act as the surviving entity as the Consortium winds down its operations. As such, the members acknowledge and agree that any application for membership in the Consortium automatically also includes membership in NSC, Inc. All members agree to abide by the terms of both these Articles of Collaboration and the corresponding Bylaws for NSC, Inc.

**Annual Dues.** Membership in the National Spectrum Consortium and NSC, Inc. will become effective upon submission of the membership application and payment of the initial dues assessment. National Spectrum Consortium Members will pay annual dues in the amounts as follows: \$500 for all organizations (dues changed effective 10/1/19 per resolution 008). National Spectrum Consortium Members will pay annual dues every October 1st. New Members will pay pro-rated dues payable upon initial acceptance of membership and then \$500 per year every October 1st thereafter. The pro-rated dues structure, based upon the date of initial application acceptance, is as follows:

All organizations:

- a) October through December - \$500
- b) January through March - \$375
- c) April through June - \$250
- d) July through September - \$125

SBA size standards will be used to determine business size. Small business size standards define the largest that a business concern, including all of its affiliates, may be and yet qualify as a small [business concern](#) for SBA and most other federal programs, The SBA has established two widely used size standards – 500 employees for most manufacturing industries and \$7.5 million in average annual receipts for many nonmanufacturing industries.

**Project Award Assessment.** In addition to any initial and annual dues that all Members of the National Spectrum Consortium are required to pay, all recipients of Spectrum Technology Project Agreement funding shall pay an assessment on all Government funds awarded under such Spectrum Technology Project Agreement to the National Spectrum Consortium via the designated Consortium Management Firm. These

funds are collected to supplement the revenue generated from initial pro-rated and annual Member dues to provide sufficient resources for conducting the required business affairs of the National Spectrum Consortium. The “per project award” assessment percentage will be established annually by the Executive Committee based on changes in membership numbers, the volume of Government funds that flow through the OTA between the National Spectrum Consortium and the Government, and/or the needs of the National Spectrum Consortium.

**Outstanding Financial Obligations of a Member.** In the event of the withdrawal of a Member pursuant to this Article, such Member’s financial obligations to the consortium shall remain in full force and effect until all outstanding obligations to the consortium are satisfied according to these Articles.

## **ARTICLE 2: CONSORTIUM MANAGEMENT**

### **Executive Committee**

The affairs of the National Spectrum Consortium shall be governed by an Executive Committee of eleven (11) elected representatives from Member organizations, each to serve for a term of three (3) years. The Executive Committee shall be composed of four (4) Members from small businesses (as defined by SBA), three (3) Members from large businesses, two (2) Members from academia, one (1) Member from a non-profit or not-for-profit organization, and one (1) at large Member. The Executive Committee Officers shall include a Chairperson, a Vice-Chairperson, and a Treasurer, to be elected by the Executive Committee. The Executive Committee will assume responsibility for implementing firewalls or such other measures to protect competitively sensitive information of the Members and to avoid and mitigate potential organizational conflicts of interest. The oversight of such duties may be transferred to the Consortium Management Firm. Any person serving on the Executive Committee may be relieved of his/her position at any time for cause by a super-majority that shall consist of three-quarters (3/4) vote of the National Spectrum Consortium Executive Committee Members who are eligible to vote.

The Executive Committee Members shall be divided into three classes, as nearly equal in number as may be, to serve in the first instance for terms of one, two and three years, respectively, and until their successors shall be elected and shall qualify, and thereafter the successors in each class of Executive Committee Members shall be elected to serve for terms of three years and until their successors shall be elected and shall qualify. In the event of any increase or decrease in the number of Executive Committee Members, the additional or eliminated Executive Committee memberships shall be so classified or chosen that all classes of Executive Committee Members shall remain or become equal in number, as nearly as may be. In the event of the death, resignation, retirement, removal or disqualification of an Executive Committee Member during the Executive Committee Member’s elected term of office, the Executive Committee Member’s successor shall be elected to serve only until the expiration of the term of the Executive Committee Member’s predecessor.

The process for selection and removal of Executive Committee members is attached hereto as Exhibit B.

### **Chairperson**

The Chairperson shall preside over all meetings of the Executive Committee, performing all duties customary to that office and supervising and controlling all of the affairs of the Executive Committee in accordance with



policies and directives approved by the Executive Committee. The Chairperson shall be authorized to sign the OTA and subsequent modifications to the OTA, on behalf of the National Spectrum Consortium. The Chairperson shall not serve successive terms. The Chairperson of the Executive Committee shall sign the management services agreement with the selected Consortium Management Firm as authorized by the Executive Committee.

#### **Vice-Chairperson**

The Vice-Chairperson shall act under the direction of the Chairperson and in the absence or disability of the Chairperson shall perform the duties and exercise the powers of the Chairperson. The Vice-Chairperson shall perform such other duties and have such other authority as the Executive Committee may from time-to-time prescribe by standing or special resolution, or as the Chairperson may from time-to-time provide, subject to the authority and the supervision of the Executive Committee. The Vice-Chairperson is authorized to sign the OTA and subsequent modifications to the OTA, on behalf of the National Spectrum Consortium, in the absence of the Chairperson.

The Vice Chairperson shall also be responsible for the communication of National Spectrum Consortium matters. As such, the Vice chairperson is responsible for the development of an annual communications plan, reviewing and approving all press releases and advertising, and all actions regarding public relations (e.g., trade shows, certain trade association interfaces, etc.).

#### **Treasurer**

The Treasurer shall act under the direction of the Chairperson as the financial representative responsible for making financial decisions and reviewing and approving all vouchers presented by the Consortium Management Firm for payment. The Treasurer shall approve disbursement of National Spectrum Consortium funds by the Consortium Management Firm, and shall render to the Chairperson and the Executive Committee, at its regular meetings, or when the Executive Committee so requires, an account of the Consortium Management Firm's transactions and of the financial condition of the National Spectrum Consortium.

#### **Ex-Officio Members**

The Government may elect to send representatives to participate in Executive Committee meetings as non-voting Members.

#### **Subcommittees**

The Executive Committee shall have the authority to form subcommittees comprised of representatives from Member organizations to advise the National Spectrum Consortium and if applicable the Government on topics of special interest to the Members, including intellectual property, resolutions of organizational conflicts of interest and procurement integrity.

#### **Consortium Management Firm**

The Members agree to use Advanced Technology International (ATI) as the Consortium Management Firm to administer the affairs of the National Spectrum Consortium under the direction of the Executive Committee. The Consortium Management Firm is prohibited from participating in technical project work of the National Spectrum Consortium. The Chairperson of the Executive Committee is authorized to communicate with the Consortium Management Firm on behalf of the Executive Committee.

The Consortium Management Firm shall manage and coordinate the affairs of the National Spectrum Consortium on an as need basis, at the direction of the Executive Director.

**Executive Director**

The Consortium Management Firm will provide an Executive Director as the single point of contact to the Members, the Government or their respective designees. The Executive Committee will approve the person assigned. The Executive Director shall serve on the National Spectrum Consortium Executive Committee as a non-voting Member.

**Chief Strategy Officer**

The Consortium Management Firm will provide a Chief Strategy Officer who will advise the Executive Committee on creating, communicating, executing, and sustaining strategic initiatives. The Executive Committee will approve the person assigned. The Chief Strategy Officer shall serve on the National Spectrum Consortium Executive Committee as a non-voting Member.

**ARTICLE 3: EFFECTIVE DATE**

These Articles shall first become effective on 7 November 2014, which corresponds to the date that the National Spectrum Consortium Charter Members listed in Exhibit A voted to approve these Articles.

**ARTICLE 4: TERM**

These Articles shall continue for a period of ten (10) years from the Effective Date of these Articles. These Articles shall continue in full force and effect for the life of the National Spectrum Consortium. Articles which by their express terms or by necessary implication apply for periods of time other than as specified in this Article shall be given effect for such period of time, notwithstanding this Article. If the Executive Committee agrees, the term of these Articles may be extended through an amendment of these Articles.

**Renewal**

Prior to the expiration date of these Articles, the Members agree to enter into good faith negotiations to establish either an extension to these Articles, a follow-on agreement, or a consortium disestablishment plan.

**Survival**

Notwithstanding the above provisions, the Member's rights and obligations with respect to Spectrum Technology Project Agreements and/or specific intellectual property agreements by and between the Government and the Member(s) shall survive any expiration or termination of these Articles.

**Withdrawal**

**Termination of Membership.** Membership in the National Spectrum Consortium shall automatically terminate under the following conditions:

- By written agreement of the Members,
- After the Government's failure to extend the OTA or issue a new other transactions agreement to the National Spectrum Consortium (and within ninety (90) days after the expiration or termination of the relevant other transactions agreement).

**Voluntary Withdrawal.** Provided that the Member has satisfied its obligations under the OTA and Base Agreement, the Member may voluntarily withdraw from the National Spectrum Consortium at any time by notice of withdrawal given to the Executive Committee.

**Involuntary Withdrawal.** If a Member materially breaches any material warranty, term or condition of these Articles (including failure to pay annual dues or project award assessments) and fails to remedy such material breach within ninety (90) days after receipt of notice of such material breach from another Member and/or the

Executive Committee, the Executive Committee shall have the right to cause the involuntary withdrawal of such Member, such withdrawal to be effective immediately upon delivery of a notice from the Executive Committee to such Member indicating their election to cause such involuntary withdrawal to occur.

**Rights of a Member.** After the effective date of withdrawal of a Member, such Member shall cease to have any rights as a Member under these Articles.

**Continued Funding and Technology Contribution Commitment.** In the event of the voluntary withdrawal of a Member pursuant to this Article such Member's rights and obligations pursuant to any Spectrum Technology Project Agreements, including but not limited to, continued funding and technology contribution commitments shall continue in accordance with the specific terms of the Spectrum Technology Project Agreements.

#### **ARTICLE 5: PROPRIETARY INFORMATION**

The Proprietary Information Exchange Agreement is attached at Exhibit C.

#### **ARTICLE 6: AUDIT**

The Consortium Management Firm shall be the single point of contact for supporting audits required by the OTA. The terms of the OTA shall be the exclusive criteria for audit access to a Member's business.

#### **ARTICLE 7: DISCLAIMERS / REPRESENTATIONS AND CERTIFICATIONS**

Representations and Warranties of All Members. Each Member represents and certifies that:

- It is free to enter into these Articles;
- In so doing, it will not violate any other agreement to which it is a Member; and
- It has taken all action necessary and required to authorize the execution and delivery of these Articles and the performance of its obligations under these Articles.

#### **ARTICLE 8: LIABILITY AND INSURANCE**

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

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

**ARTICLE 9: LIMITATION ON DISCLOSURE**

Except as expressly provided for in these Articles, no one Member has the obligation to disclose to another Member any market data or plans except as such information is made publicly available. The Members will not exchange competitively sensitive information with one another, including, without limitation, proprietary cost or pricing data. The Members will not exchange competitively sensitive information regarding projected sales or profitability.

**ARTICLE 10: INDEPENDENT CONTRACTOR STATUS**

The relationship of the Members established by these Articles is that of independent contractors, and nothing contained in these Articles shall be construed to (i) give any of the Members hereto the power to direct or control the day-to-day activities of another Member hereto, (ii) constitute the Members as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow any of the Members hereto to create, discharge or assume any obligation on behalf of another Member hereto for any

purpose whatsoever. Each Member retains the right to engage independent research and activities that may compete with, or be contrary to, the goals of the National Spectrum Consortium.

**Article 11: Intellectual Property**

Except and to the extent specifically set forth herein, nothing in these Articles shall be construed as conferring by implication, estoppel or otherwise any license or right under any patent, copyright, trade secret, trademark or other proprietary right of any Member.

With respect to any collaboration between Members through their participation in the National Spectrum Consortium including any collaboration pursuant to individual-Member-to-Member agreements, intellectual property shall be treated in accordance with the following principles:

(a) Intellectual Property developed or otherwise acquired by a Member prior to or outside the scope of any collaboration with other Member(s) through its participation in the National Spectrum Consortium including any collaboration pursuant to an individual Member-to-Member agreement ("**Background Intellectual Property**"), and any Intellectual Property Rights therein, shall be owned by the Member that developed or otherwise acquired the Background Intellectual Property and associated rights.

(b) Intellectual Property developed solely by employee(s) of one Member in performance of any collaboration with other Member(s) through its participation in the National Spectrum Consortium including any collaboration pursuant to an individual Member-to-Member agreement ("**Foreground Intellectual Property**"), and any Intellectual Property Rights therein, shall be solely owned by the Member whose employee(s) developed the Foreground Intellectual Property.

(c) Intellectual Property developed jointly by employees of both Members in performance of any collaboration with other Member(s) through its participation in the National Spectrum Consortium including any collaboration pursuant to an individual Member-to-Member agreement ("Jointly Developed Intellectual Property"), and any Intellectual Property Rights therein, shall be jointly owned by the Members. Each Member shall have an equal undivided one-half interest in Jointly Developed Intellectual Property and any Intellectual Property Rights therein. Each Member agrees to use reasonable efforts to maintain Jointly Developed Intellectual Property as confidential and proprietary in the same manner it treats its own Intellectual Property of a similar character. Each Member shall be free to make, use, sell and import/export products or processes incorporating Jointly Developed Intellectual Property without the consent of, or accounting to, the other Member, unless such Jointly Developed Intellectual Property incorporates the other Member's Background

Intellectual Property or Foreground Intellectual Property or use thereof would constitute an infringement of the other Member's solely-owned Intellectual Property Rights. The Members also agree to use good faith efforts to collaborate with respect to the filing, prosecution, maintenance, licensing, and enforcement of any Intellectual Property Rights in Jointly Developed Intellectual Property.

(d) The Consortium itself will not receive any rights to any Member's intellectual property.

Regarding agreements between the National Spectrum Consortium and/or individual Members, and the Government, rights to intellectual property will be treated in accordance with the terms of any applicable other transaction agreement and any follow-on production contracts resulting from such other transaction agreement.

**ARTICLE 12: FILING WITH U.S. ATTORNEY GENERAL AND FEDERAL TRADE COMMISSION**

Except for the disclosure of basic information regarding the National Spectrum Consortium (i.e., membership, purpose and a general description of the technical work), formal written approval by the National Spectrum Consortium Executive Committee is required for any specific publicity or advertising relative to these Articles.

However, the Members agree that notification of the establishment of the National Spectrum Consortium (and subsequent addition or deletion of Members) shall be filed with the U.S. Attorney General and the Federal Trade Commission by the Consortium Management Firm on behalf of the Members in accordance with the provision of the National Cooperative Research Act of 1984 within 90 days of execution of these Articles, with a copy provided to all Members. The costs of this filing shall be borne by the National Spectrum Consortium.

**ARTICLE 13: NOTICES**

Any notice or other communication required or permitted under these Articles shall be in writing and (i) personally delivered, (ii) mailed, postage prepaid, first class, certified mail, return receipt requested, (iii) sent, shipping prepaid, return receipt requested by national overnight courier service, or (iv) sent by electronic mail to the appropriate Member or Members at the addresses as set forth in Exhibit A or at such other addresses as may be given from time to time in accordance with the terms of this provision.

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 four (4) days after the date deposited in the United States mail; and any notice or other communication given by national overnight courier service shall be deemed given on the next business day after being sent.

**ARTICLE 14: DISPUTES**

The Members recognize that disputes pertaining to certain matters may from time to time arise during the term of these Articles, which relate to a Member's rights and/or obligations hereunder or thereunder. It is the objective of the Members to establish procedures to facilitate the resolution of disputes arising under these Articles in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Members agree to follow the procedures set forth in this Article if and when a dispute arises under these Articles. However, if an organization can provide evidence that it is prohibited from entering into binding arbitration, the dispute resolution procedures will be negotiated on a case by case basis.

### **Dispute Resolution Representatives**

In the event of disputes between the Members, including disputes among the Members' representatives to the Executive Committee which such representatives are unable to resolve, a Member 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. Said designated officers are as follows:

- For the Member: Designated Senior Executive
- For the National Spectrum Consortium: Consortium Management Firm

In the event the designated officers are not able to resolve such dispute, either Member may at any time after the fourteen (14) day period invoke the provisions of the Alternate Dispute Resolution provision below.

### **Alternative Dispute Resolution**

Following settlement efforts pursuant to the procedures in this Article, any dispute, controversy or claims arising out of or relating to the validity, construction, enforceability or performance of these Articles, including disputes relating to alleged breach or to termination of these Articles, shall be settled by binding Alternative Dispute Resolution ("ADR") in the manner described below:

- ADR Request: If a Member intends to begin an ADR to resolve a dispute, such Member shall provide written notice (the "ADR Request") to the other Member informing such other Member of such intention and the issues to be resolved.
- Additional Issues: Within ten (10) business days after the receipt of the ADR Request, the other Member may, by written notice to the Member initiating ADR, add additional issues to be resolved.
- No ADR of Intellectual Property or Patent Issues: Disputes regarding the ownership of, and/or rights to Intellectual 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.

### **Arbitration Procedure**

Any dispute or claim arising out of, or in connection with these Articles 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 Members in dispute and a third being 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. If no agreement as to venue is reached within fifteen (15) business days of written notice that a Member seeks arbitration of a dispute, a majority of the Executive Committee shall choose the place of arbitration. 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 Members 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 Member. Nothing in this Article shall limit a Member's right to seek injunctive relief with respect to a breach or threatened breach of these Articles.

### **ARTICLE 15: ASSIGNMENT**

Neither these Articles nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable without the prior written consent of the National Spectrum Consortium Executive Committee; which consent shall not be unreasonably withheld. A Member may assign its rights and delegate its obligations

(I) to any affiliate of such Member (although, in the event of any such assignment and delegation, the assigning Member shall remain primarily liable for its obligations hereunder) and (ii) to a purchaser of all or substantially all of the business of such Member to which these Articles relates by merger, sale of assets or otherwise. If the Member, after the assignment or purchase cannot meet the requirements for Consortium membership as called out in these Articles and the National Spectrum Consortium Membership Agreement, the Member will be considered to have voluntarily withdrawn from the National Spectrum Consortium in accordance with Article 4 herein.

**ARTICLE 16: GOVERNING LAW**

This Agreement shall be interpreted by application of New York law without regard to its conflicts of law provisions. Where Member is a non- New York state governmental entity, this Section will be deemed to be deleted and replaced with the following, “Nothing in this Agreement is intended to cause Member to waive the legal immunities and defenses provided under its State enabling laws.”

**ARTICLE 17: ENTIRE AGREEMENT**

These Articles, including all Exhibits referred to herein, constitute the entire agreement of the Members and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions among the Members, whether oral or written, with respect to the subject matter hereof.

**ARTICLE 18: INVALIDITY OF PROVISIONS**

If any provision of these Articles is deemed to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the Members, it will be stricken and the remainder of these Articles will remain in full force and effect.

**ARTICLE 19: Authorization to Share Information**

ACC-NJ Memo entitled “*Transition of Spectrum Forward OTA W15QKN-21-9-5599, National Spectrum Consortium, Inc. (NSC, Inc.)*” dated October 4, 2023, attached hereto as Exhibit D is hereby incorporated by reference into these Articles of Collaboration. In accordance with Exhibit D, ATI is permitted to share any and all documents that ATI may currently hold on behalf of the National Spectrum Consortium in its capacity as their Consortium Management Firm under the Spectrum Forward OTA, including but not limited to any documentation pertaining to all previously awarded, active, and upcoming award projects once ATI has received proper written approval from the Consortium Member.

**ARTICLE 20: GENERAL PROVISIONS**

**Order of Precedence.** Should there be any conflict between the terms and conditions of these Articles and the OTA, the OTA shall take precedence.

**Amendments.** No amendment or modification of these Articles shall be valid unless agreed to in writing by two-thirds (super-majority) of the National Spectrum Consortium Executive Committee membership. The Executive Committee may, at its discretion, refer certain proposed amendments to the full National Spectrum Consortium membership for validation by a majority vote of the membership. All proposed amendments to these Articles shall be distributed to the Executive Committee Members at least thirty (30) days prior to the proposed effective date.

**Waiver.** No waiver of any rights shall be effective unless agreed to in writing by the Member to be charged. Waiver by any Member of any breach or failure to comply with any provision of these Articles by another Member shall not be construed as, or constitute, a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of these Articles.

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

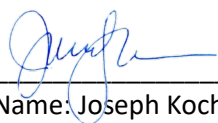
**Obligations of the Members.** The Members agree to work together to accomplish the objectives of the National Spectrum Consortium by carrying out their responsibilities as set forth in any Spectrum Consortium Project Agreement issued through the National Spectrum Consortium.

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

**Compliance with U. S. Export Laws.** The Members shall comply with all applicable export control laws and regulations of the United States, including the Arms Export Control Act (“AECA”), the International Traffic in Arms Regulations (“ITAR”), the Export Administration Regulations (“EAR”), and other U.S. government directives related to export control. No Member shall export or re-export any information, data, technical know-how, products, goods or related services (“Controlled Items”) under these Articles 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 these Articles 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 or U. S. Department of Commerce Entity List or any other U.S. government list of persons or entities under these Articles to which dissemination of Controlled Items shall not be made.

**Use of Names.** Neither any Member nor the National Spectrum Consortium (including its affiliated entities) shall use the name, trademarks, other marks or logos of any other Member in any way, including but not limited to advertising, promotional, or sales literature, without prior written consent, in each and every instance.

**IN WITNESS WHEREOF,** these Amended and Restated Articles of Collaboration have been unanimously approved by the members of the Consortium’s Executive Committee.



\_\_\_\_\_  
Name: Joseph Kochan  
Title: Executive Director

Date: October 25, 2023



**Exhibit A: Charter Membership Listing**

Georgia Tech Applied Research Corporation

Northrop Grumman Corporation

Shared Spectrum Company

The Disney / ABC TV Group

The University of Mississippi

Vanu, Inc.

## **Exhibit B:**

# **NATIONAL SPECTRUM CONSORTIUM (NSC) EXECUTIVE COMMITTEE SELECTION PROCESS**

## **NSC Executive Committee**

### ***Executive Committee Purpose, Responsibilities and Authority***

The affairs of the National Spectrum Consortium (NSC) shall be governed by an Executive Committee. The Executive Committee is the NSC leadership and governance body authorized to oversee the activities of the Consortium and to exercise all the powers and authority in managing the business and other affairs of the consortium to the extent provided in the Articles of Collaboration or in resolutions of the Executive Committee. The Executive Committee's specific responsibilities include:

- implement firewalls or such other measures to protect competitively sensitive information of the Members;
- avoid and mitigate potential organizational conflicts of interest;
- approval and disapproval of membership applications;
- removal of Members that do not maintain Member in Good Standing status;
- organization of the general membership meetings;
- formation and management of other standing or temporary consortium subcommittees as needed;
- dispute resolution between individual Members, between Members and the Government, and/or the NSC Consortium Management Firm relating to matters arising under the Other Transactions (OT) Agreement or in connection with other consortium business; and
- fulfillment of the specific administrative and supervisory functions delineated in the Articles of Collaboration and the OT Agreement.

The oversight of such duties may be transferred to the Consortium Management Firm; however, the responsibility and authority remains with the Executive Committee.

## **Executive Committee Elections**

### ***Executive Committee Composition***

The Executive Committee shall consist of eleven (11) elected representatives from Member organizations, each to serve for a term of three (3) years. The Executive Committee shall be composed of four (4) Members from small businesses (as defined by SBA), three (3) Members from large businesses, two (2) Members from academia, one (1) Member from a non-profit or not-for-profit organization, and one (1) at large Member. Six (6) of the initial roster of Executive Committee Members will have a one-time three (3) year term to provide continuity during National Spectrum Consortium startup, after which the Executive Committee will establish an annual rotation cycle of approximately one-third of the committee Members. Executive Committee Officers shall include a Chairperson, a Vice-Chairperson, and a Treasurer, and shall be elected by the sitting Executive Committee in accordance with the Articles of Collaboration.

For the purposes of establishing the NSC Executive Committee demographic representation outlined above, the Member Organization definitions found in the NSC Articles of Collaboration will be used. For

the "academia" demographic the following definition shall apply: an NSC Member Organization in good standing that is an accredited institution (college, university or other educational institution) of higher learning in the United States.

Should there be an insufficient number of nominations in one or more election categories to fill the available number of seats, additional "at large" members will be selected from those nominees missing selection by the fewest number of votes within their own demographic group.

Although specific participation on the Executive Committee by "non-traditional" government contractors is not prescribed formally in the Articles of Collaboration, the critical role these organizations will fulfill in executing projects supports the conclusion that this demographic group also should have a voice within the Executive Committee. Accordingly, the following policy will be used to promote the nomination and election of members who represent non-traditional government contractors:

- At the time of the nomination request, the number of non-traditional government contractor representatives elected to the Executive Committee shall be such that the total representation of non-traditional government contractors on the committee shall be an equivalent percentage ( $\pm 10$ ) to that of the actual percentage of non-traditional government contractors within the consortium.
- All nominees from non-traditional government contractor members will have their organization's "non-traditional" status flagged on the election ballot so voting members are aware of this designation when casting their ballots. The non-traditional status of an organization will be self-certified and validated to the extent possible by the consortium management firm.
- The individual(s) from the pool of non-traditional government contractor nominees who receives the highest number of votes during an election cycle will fill the seat(s) available to the demographic category of that nominee's organization (i.e., large organization, small organization, non-profit/not-for-profit, or academia), even if that nominee's vote total would not otherwise have resulted in his/her election within that demographic category. Members so elected will serve the full term, even if subsequent contracts awarded to their organization cause that organization to lose its "non-traditional" designation.

Elections to replace the Executive Committee Members whose terms are expiring generally will be held one time per year in advance of the General Membership Meeting which most closely precedes the expiration of the Executive Committee Members' terms of office. The Consortium Management Firm (CMF), under direction from the Executive Committee, shall preside over the elections.

### ***Executive Committee Candidate Qualifications***

The NSC is committed to holding fair and open elections that will enable the membership to select freely from among themselves those candidates who best can represent the interests of the consortium and guide it to collective success. Keeping in mind the national purpose and importance of this endeavor, and the significant investment by business and Government, it is important that leadership of the consortium be composed of dedicated and knowledgeable individuals, representing committed organizations, who have the time, resources and acumen to contribute to this important endeavor. Member organizations are encouraged to nominate those individuals who have the time, experience, energy and creativity to guide the Consortium to success.

Executive Committee Members should anticipate weekly demands on time and occasional travel to meet their Consortium responsibilities. While the CMF will support the administrative and daily operational demands of the enterprise, the Executive Committee is expected to establish policy and make decisions that will guide its relationship with the client and generate fair business opportunity for the membership.

From among their own members, the Executive Committee is expected to elect all Executive Committee officers, deepening the commitment of those selected.

Using the experience of the NSC Steering Committee as a benchmark, the Executive Committee can anticipate frequent telephonic interaction with standing and special sub-committees and regular, recurring teleconferences with the CMF. Once Request for Prototype Proposals (RPPs) are issued and technology initiatives awarded, additional interactions with the client, perhaps as frequently as weekly, should be anticipated. Travel and associated costs will be incurred by the Executive Committee Member's organization for participating in Executive Committee meetings and other activities. Communications and interactions with the membership also will be time intensive, although the CMF can be expected to deal with matters of administration allowing Executive Committee Members to focus on policy issues.

Consortium Members who are confident that they and their organizations can meet these commitments, and who have the interest and experience to serve both Consortium and National interests, are encouraged to seek nomination and election to the Executive Committee.

Executive Committee candidates must:

- Be a senior employee working exclusively for a Member Organization suited to represent the Consortium in peer-level engagements with Government decision-makers;
- Represent a Member Organization having business opportunities as a developer or supplier of EM Spectrum technology;
- Be a U.S. citizen;
- Commit to devoting the time and attention needed to meet the expectations described herein; and
- Be willing to act with the best interests of the consortium, rather than those of any particular Member Organization, at heart.

### ***Executive Committee Nomination Process***

The CMF will be responsible for overseeing the nomination of individuals from Member entities to stand for election to the Executive Committee. All Member Organizations in good standing shall be given at least two (2) weeks' notice of any such open positions and provided an opportunity to nominate one or more individuals who meet the qualifications described herein. Nominations shall include candidate names, qualifications, organizational affiliations and type designation (e.g., large business, small business, non-profit/not-for-profit organization or academic institution), and other information that the Executive Committee may require. A sample nomination form is provided as Appendix A.

The CMF shall form a slate of candidates and make all relevant information regarding the open positions and each nominee available to the membership at least three (3) calendar days before an election is held. Except for election of the initial Executive Committee members and other special conditions, elections normally shall be held in advance of the next General Membership meeting.

### ***Executive Committee Election Process***

Except as noted above, elections will be conducted in advance of General Membership Meetings using electronic ballots. The election results will be announced prior to the General Membership Meetings. Each Member Organization may cast a single ballot. The candidate(s) in each category (e.g., large business, small business, non-profit/not-for-profit organization, academic institution)

receiving the most votes will be elected as Executive Committee members, consistent with the provisions described above pertaining to representation by non-traditional government contractor nominees. The Executive Committee may choose to conduct subsequent elections at a time other than in advance of the General Membership Meeting.

### ***Executive Committee Member Resignation***

Any Executive Committee member may resign at any time by giving written notice of such resignation to the remainder of the Executive Committee via the Chairperson. Such resignation shall take effect at the time specified in the notice; provided, however, that if the resignation is not to be effective upon receipt of the notice by the Executive Committee, the Executive Committee must accept the effective date specified.

Executive Committee members from a Member Organization that withdraws or is removed from membership in the Consortium shall be considered as terminated from their positions as of the effective date of such entity's resignation or removal from the Consortium.

### ***Executive Committee Member Removal***

Executive Committee members are expected to attend meetings and participate actively in the work of the committee. Failure to do so as determined by a consensus of the other committee members shall result in a request to the non-participatory committee member to either re-engage in the work of the committee or resign his/her position. A recurring or continued failure to do so thereafter shall result in a recommendation by the other committee members to the Executive Committee that the non-participatory committee member be terminated from his/her position, which shall become effective upon the approval of the Executive Committee.

Any Executive Committee member may be removed, and the member's position declared vacant with or without cause, by the affirmative vote of a supermajority (2/3) of votes represented and voting at a duly held meeting at which a quorum of the Executive Committee is present.

### ***Executive Committee Vacancies***

Following the Executive Committee election process, the candidate(s) in each category (e.g., large business, small business, non-profit/not-for-profit organization, academic institution) receiving the second most votes will serve as an alternate for the Executive Committee, consistent with the required member demographic representation. Should an Executive Committee member resign or be removed, the alternate from the departing Executive Committee member's category will be asked to serve the remainder of the individual's term. Should the alternate choose not to fill the remainder of the term, the Executive Committee will determine if the remaining term is sufficient to hold a special election or if the position will remain open until the next scheduled election.

### ***Executive Committee Special Elections***

When deemed appropriate by consensus of the Executive Committee, a special election may be held. In these cases, a call for nominations will be sent to all member organizations by the CMF. Once all nominations are received, voting generally will follow the procedures provided above.

### ***Executive Committee Officer Positions***

The Executive Committee will be governed by officers including a Chairperson, Vice-Chairperson and Treasurer, whose responsibilities are outlined in the Consortium's Articles of Collaboration. Once elected and constituted, Executive Committee members shall set all policies not delineated

within the Articles of Collaboration by which their officers are selected, including their term of office and procedures for succession.

The Executive Committee will elect the Chairperson, Vice-Chairperson and Treasurer positions as a vacancy arises due to Executive Committee rotation or expiration of the Officer term. Officer terms for the Chairperson, Vice-Chairperson and Treasurer positions shall be for 2 years. The Leadership term may cross over Executive Committee terms, assuming the individual is re-elected to an Executive Committee position. Officers may serve multiple and/or consecutive terms, except for the Chairperson, who may not serve consecutive terms as dictated by the Articles of Collaboration. He or she may serve multiple Chairperson terms, but not consecutively. Any person serving in an Executive Committee Officer position may be relieved of his/her position at any time for cause by a super-majority that shall consist of three-quarters (3/4) vote of the National Spectrum Consortium Executive Committee Members.

## **EXHIBIT C: PROPRIETARY INFORMATION EXCHANGE AGREEMENT**

1. During the term of the Articles, the Members of the National Spectrum 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 National Spectrum Consortium as defined in the Articles. Confidential Information is defined as all confidential and proprietary information disclosed by a Members 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 shall include 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 the Articles. Thereafter, this Agreement shall be effective for any new Members to the Articles on the date such new Member signs the National Spectrum Consortium Membership Agreement.

2. Notwithstanding that the term of this Agreement will have expired for 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 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.

4. For the avoidance of doubt, each Member acknowledges and agrees that any Confidential Information disclosed by another Member, in whatever form, is and will be the sole property of the Member disclosing the Confidential Information, and the Member disclosing the Confidential



Information retains and own all right, title and interest in and to any Confidential Information, including all intellectual property and proprietary rights therein, whether currently existing or arising in the future. No present or future intellectual property rights or licenses are offered, granted or implied by the disclosure by a Member of any Confidential Information to other Members. Each Members agrees that upon the request of, and as directed by, a Member disclosing any Confidential Information, it will immediately either return such Confidential Information to the party disclosing such Confidential Information or destroy such Confidential Information, as so directed. The return or destruction of Confidential Information does not relieve a Member of its obligations set forth in this Agreement.

**EXHIBIT D: ACC-NJ Memo**



DEPARTMENT OF THE ARMY  
U.S ARMY CONTRACTING COMMAND – NEW JERSEY  
PICATINNY ARSENAL, NEW JERSEY 07806-5000

Reply to  
Attention of:

04 October 2023

CCNJ-ET

SUBJECT: Transition of Spectrum Forward OTA W15QKN-21-9-5599, National Spectrum Consortium, Inc. (NSC, Inc.)

ATTN: Rebecca Harmon, Sr. Contracts Manager  
Advanced Technology International  
315 Sigma Drive  
Summerville, SC 29486

Dear Ms. Harmon,

Please be advised that ACC-NJ has been in discussions with the National Spectrum Consortium regarding a Novation of the Spectrum Forward OTA, W15QKN-21-9-5599, to the National Spectrum Consortium, Inc. (NSC, Inc.), their newly created non-profit entity. In this transaction, the National Spectrum Consortium would transition to become a self-performing OTA. ACC-NJ has no objection to the proposed transaction and is actively preparing for its execution. In order to ensure a seamless transition, ACC-NJ kindly asks Advanced Technology International (ATI) to:

- Provide NSC, Inc. full access to any and all documents that ATI may currently hold on behalf by the National Spectrum Consortium in its capacity as their Consortium Management Firm under the Spectrum Forward OTA, including but not limited to any documentation pertaining to all previously awarded, active, and upcoming award projects, without further permissions necessary from ACC-NJ; and
- Fully cooperate with NSC, Inc. in connection with consummating the transition in an efficient manner that minimizes any potential disruptions to the operations of the projects being administered through the Spectrum Forward OTA.

Please do not hesitate to contact Mr. Chad Hudelson (chad.k.hudelson.civ@army.mil) or the undersigned (samantha.r.fenske.civ@army.mil), with any questions and/or concerns.

Sincerely,

A handwritten signature in black ink that reads "Samantha R. Fenske".

Samantha R. Fenske  
Agreements Officer