

America's DataHub Consortium

Consortium Membership Agreement

PURPOSE

This Consortium Membership Agreement ("CMA") establishes the America's DataHub Consortium ("ADC") as of September 1, 2021.

WHEREAS, the Government has expressed intent to collaborate with academic, for-profit, non-profit, and non-traditional members, to leverage their combined capability to coalesce the statistical community and provide a source of information for policy formulation by other federal agencies, including the dissemination of information that may be used to formulate policy approaches to complex social/economic issues and emerging crises;

WHEREAS, the ADC Members are entering into the CMA in order to provide for (i) a consortium for collaboration with the Government through the oversight of the National Science Foundation, to conduct research, development, projects and programs through an Other Arrangement or other agreements, (ii) their respective rights and obligations as a Member of the consortium, and (iii) administrative matters pertaining to the conduct of activities as Members of this consortium;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained in the CMA, the ADC Members agree as follows:

DEFINITIONS

HEREINAFTER the following definitions apply:

ADC means the America's DataHub Consortium, which is made up of academic, for-profit, non-profit, and non-traditional member organizations pursuant to this CMA.

Consortium Management Firm (CMF) refers to the organization acting on behalf of the ADC (not as an agent of any individual Member) to negotiate, execute and administer the ADC's efforts under an Other Arrangement or some other agreement with the Government. The Consortium Management Firm's purpose is to perform the specific Consortium Management duties as specified in the Other Arrangement between the Government and ADC, as well as support the operations of ADC.

Member or Members means respectively an individual ADC Member organization or the ADC Member organizations collectively that are signatories to the ADC Consortium Membership Agreement.

Other Arrangement or OA means the contract pursuant to NSF's statutory authority at 42 U.S.C. § 1870(c), which is entered into by the Government and the CMF for the ADC.

Base Agreement means the agreement between the ADC Consortium Management Firm and the ADC Member, which serves as the baseline agreement for all future Project Agreements. The Base Agreement flows down applicable terms and conditions from the Other Arrangement with the Government.

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

ARTICLE 1: CONSORTIUM MEMBERSHIP

Membership. The ADC will be open to and include academic, for-profit, non-profit, and non-traditional membership organizations. The Members hereby adopt a non-exclusive, open Membership policy. The Members will include additional Members in accordance with the provisions contained in the ADC

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Consortium Membership Agreement. Any Members, regardless of when they join the ADC, shall enjoy the same rights and incur the same obligations as any other Member hereunder. Membership in the ADC will become effective upon approval of the Membership application.

Membership Dues. ADC Members will pay non-refundable annual dues every October 1st in the amount \$500. The purpose of dues is to offset expenses of the Consortium. New Members will pay pro-rated dues payable upon initial acceptance of Membership and then annual dues thereafter. The pro-rated dues structure, based upon the date of initial application acceptance is as follows:

a) October through March - \$500

Oct 2022 – Sept 2023

b) April through September - \$250

Obligations to be a Member in Good Standing. ADC Members must be current (no greater than 60 days past due) on Membership dues in order to be considered in good standing. Only Members in good standing will be permitted to participate in any ADC event or respond to solicitations for project awards.

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

- a) Be a U.S. firm or institution organized or existing under the laws of the United States, its territories, or possessions. For the purposes of this CMA, any foreign firm or institution shall not be granted Membership.
- b) Not be barred or suspended from contracting with or receiving funds from the United States Government;
- c) Clearly demonstrate in their Membership application that they are capable of making a technical contribution in the following objective areas:
 - Developing new ways of acquiring, cleaning, and standardizing data; combining multiple data sets; and linking data from various government and private sources to yield valuable insights into critical issues.
 - Designing, building, and supporting cutting-edge data infrastructure that will increase our abilities to process and analyze data in real time, store data securely, and expand research access.
 - Building even stronger data security capabilities to further increase privacy protections and public trust.
- d) Contribute their respective talents and resources to the ADC for activities such as periodic meeting attendance, committee and subcommittee participation, and other activities as may be appropriate;
- e) If required maintain an active NCSSES Restricted Use Data License with National Center for Science and Engineering Statistics (NCSSES) of the NSF in accordance with <https://www.nsf.gov/statistics/license/>;
- f) Not transfer Membership to any third party;
- g) 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.
- h) Comply with all applicable U.S. antitrust laws.
- i) Provide all cost and technical data as required in any ADC solicitation to which it responds;
- j) Abide by the terms of this CMA and the Base Agreement.

ARTICLE 2: CONSORTIUM STRUCTURE

Technical Advisory Committee. The Technical Advisory Committee (TAC) shall consist of elected Consortium Members . It is anticipated the TAC with the CMF will have periodic engagements with Government stakeholders. The ADC will populate the consortium members of the TAC based on nominations from the Membership, and the CMF will be a permanent member of the TAC. The TAC shall be comprised of two (2) Members organizations classified as large businesses or non-profit, three (3) Member organizations classified as small businesses, and one (1) Member organization classified as academia, and each member shall serve a three year term. Any person serving on the TAC may be relieved of his/her position at any time for cause or for no cause by a two-thirds (2/3) vote of the ADC TAC members.

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

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

Consortium Management Firm. Advanced Technology International is the Consortium Management Firm that will administer the affairs of the ADC. The Consortium Management Firm shall:

- Act as the point of contact for the ADC;
- Be responsible for the daily management of the ADC in support of both the CMA and the OA;
- Provide a Program Director to oversee the operations of the ADC and be the point of contact to the Members and the Government, or their respective designees;
- Use best efforts to guard against the disclosure of competitively sensitive information and institute antitrust compliance policies and procedures for the ADC;
- Take appropriate steps to avoid organizational conflicts of interest among the Members and to mitigate such conflicts if they cannot be avoided;
- File with the U.S. Attorney General and the Federal Trade Commission changes in Membership in accordance with the provisions of the National Cooperative Research Act of 1993 within 90 days of approval of the CMA;
- Manage the finances of the ADC to include invoicing, collecting, and tracking Membership dues from Member organizations;
- Host periodic collaborative, membership meetings.

ARTICLE 3: TERM

Membership is renewed annually upon payment of non-refundable dues. Members may terminate Membership at any time by written notice to ADC; and in its sole discretion, ADC may terminate a Member’s

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participation in the Consortium by written notice to a Member should such Member fail to comply with the Member Obligations set out in this CMA. In the event of the termination, Member's rights and obligations pursuant to any Project Agreements, including but not limited to, continued funding and technology contribution commitments shall continue in accordance with the specific terms of the Project Agreements. Upon dissolution or other termination of the ADC, any residual member dues, after payment in full of all debts, obligations, and necessary final expenses, or after the making of adequate provision thereof, shall be distributed to the U.S. Treasury.

ARTICLE 4: INDEPENDENT CONTRACTOR STATUS

The relationship of the Members established by the CMA is that of independent contractors. Nothing contained in the CMA 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 ADC.

ARTICLE 5: INTELLECTUAL PROPERTY/ PROPRIETARY DATA

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

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

IN WITNESS WHEREOF, the Members have caused the CMA to be executed by the duly authorized representatives on the respective dates entered below.

Name: _____ (Member Organization Name)

By: _____ (Member Organization Representative)

Title: _____ (Representative's Title)

Signature: _____

Date: _____

EXHIBIT A: PROPRIETARY INFORMATION EXCHANGE AND NONDISCLOSURE AGREEMENT

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

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

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