

## BUSINESS TO BUSINESS AGREEMENT

CWX-XXX-0X

INSERT PROJECT TITLE

This Business-to-Business Agreement (“Agreement”) is made and entered into as of the Effective Date by and between Advanced Technology International (ATI) a South Carolina not-for-profit corporation with its principal place of business located at 315 Sigma Drive, Summerville, SC 29486 and **Selectee** (“Selectee”), with the place of business located at **Selectee Address** (each a “Party” and collectively the “Parties”).

### SECTION I: TERMS AND CONDITIONS (“T&C”)

#### RECITALS

**WHEREAS**, ATI is a nonprofit organization, acting as a partnership intermediary for the United States of America (the “Government”), chartered to create an innovative environment for bringing together the best minds of industry, academia, and Government to collaborate and find solutions to the toughest science and technology challenges while championing science, technology, engineering, and mathematics education for all levels of society, including, but not limited to, support of the Partnership Intermediary Agreement (“PIA”) between ATI and the Department of Energy (“DOE”).

**WHEREAS**, Selectee is a non-profit, tax-exempt, educational institution with expertise and capabilities deemed to be valuable to the purposes of the associated DOE opportunity.

**WHEREAS**, the PIA, entered into under 15 U.S.C. § 3715, authorizes ATI, under the direction and approval of DOE, to enter into Agreements with entities such as Selectee.

**WHEREAS**, ATI wishes to engage Selectee to perform tasks (“Services”) in furtherance of the purposes of the associated DOE opportunity.

**WHEREAS**, Selectee wishes to provide ATI with Services and **Selectee’s** performance of Services hereunder will further its instructional, scholarship, and research objectives.

**NOW, THEREFORE**, in acknowledgment of the recitals above and in consideration of the terms, covenants, and conditions hereinafter set forth, including in the attached and hereto incorporated Exhibits, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

#### ARTICLE I – RETENTION AND SERVICES

1.1. **Term.** This Agreement shall become effective on the date of the last signature (“Effective Date”) and, unless otherwise terminated in accordance with the terms of Section 1.10 of this Agreement or stated to survive termination, will continue for sixty (60) days after the final deliverable date specified in the Statement of Effort (“SOE”) in Section II.

1.2. **Services.** Selectee, in providing the Services contemplated under this Agreement, shall:

- a. Perform the Services as more particularly set forth in the SOE contained in Section II in a timely, professional, and workmanlike manner in accordance with applicable and relevant laws and regulations, including any requirements and obligations set forth in the SOE;
- b. In its performance of this Agreement, utilize properly trained, skilled, and experienced personnel, supplied with all necessary and adequate equipment and personal protective gear;

- c. Timely disclose all circumstances to ATI that currently exist or arise during performance of this Agreement that create a conflict of interest in accordance with Section 4.3;
  - d. Communicate with ATI regarding performance of Services under this Agreement, and progress thereof, as often as reasonably necessary and upon ATI's request;
  - e. Provide ATI with all relevant information, documents, and technical support reasonably necessary for performance of Services under this Agreement, and provide the same at the request of ATI; and
  - f. Use reasonable efforts to deliver all Milestones by the date set forth in Section II.
- 1.3. **No Assurances.** Neither Party guarantees any results, including, without limitation, their nature, utility, or economic or commercial value, of the required Services more particularly set forth in the SOE. Selectee shall provide Services, more particularly set forth in the SOE, on a reasonable best-efforts basis.
- 1.4. **Timing and Delay.** Selectee recognizes and agrees that failure to meet the milestones in accordance with the delivery schedule detailed in the SOE under Section II ("Milestone and Invoice Schedule") may result in administrative expense or other damages to ATI and/or DOE. Selectee shall, therefore, inform ATI immediately of any anticipated delays in Milestone delivery and of any remedial actions being taken to ensure completion of the Milestone according to such delivery schedule. Selectee shall have the opportunity to cure such delays within thirty (30) days of the original deadline, or if mutually agreed by DOE and the Parties in writing, the delivery schedule of the SOE may be adjusted.
- 1.5. **Reports.** Selectee shall provide ATI with a status summary of work in progress of its activities based on the schedule defined in the SOE in Section II.
- 1.6. **Audits.** During the Term under Section 1.1 and surviving for three (3) years thereafter, ATI and DOE shall have the right from time to time, upon advance written notice and during regular business hours, to inspect and audit all records relating to Services under this Agreement and otherwise as to this Agreement to the extent necessary for ATI or DOE to comply with any audit to which ATI or DOE are subjected. Selectee shall reasonably cooperate with any audit right exercised by ATI under this Section 1.6.
- 1.7. **Independent Contractor.** The Parties agree to perform the Services hereunder solely as independent contractors. The Parties will remain independent contractors in their relationship with one other. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or other similar relationship between the Parties, or as authorizing either Party to act as the agent of the other Party. ATI shall not be responsible for withholding taxes with respect to Selectee's compensation hereunder. The Parties shall not have a claim against the other for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Nothing in this Agreement shall create any obligation between either Party and a third-party except with respect to the protections of the Government and DOE as set forth herein.
- 1.8. **Attestations.** Each Party attests and certifies as follows:
- a. It has full power, authority, legal competency, and right to enter into and perform its obligations under this Agreement;

- b. This Agreement is a legal, valid, and binding obligation of each Party, legally enforceable against each Party in accordance with its terms;
- c. Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a Party;
- d. It is financially able to satisfy any funding commitments made pursuant to this Agreement;
- e. It has the sole right to control and direct the means, details, manner, and method by which the Services are carried out;
- f. It has the necessary knowledge, skills, experience, and ability to perform the required Services; and
- g. It has the right to perform the Services at any place or location, and at such times as it shall determine.

1.9. **Event of Default.** Each of the following events shall constitute an “Event of Default”:

- a. Selectee’s Services, as enumerated by the SOE in Section II, being performed by any party other than Selectee;
- b. Services, as enumerated by the SOE in Section II, being performed by Selectee after the Term under Section 1.10 or Termination under Section 1.11;
- c. Selectee’s failure to perform any obligation under Section 1.2, including failure to perform by any associated Milestone delivery date; and
- d. Selectee’s failure to comply with or abide by the terms and conditions outlined in the Agreement and any exhibits thereto, including the SOE.

1.10. **Period of Performance.** The period of performance for this Agreement is from the effective date, which is the date of last signature through **Date**.

1.11. **Termination.** This Agreement may be terminated by:

- a. Either Party, or by DOE pursuant to an instruction to ATI, upon thirty (30) days written notice to the other Party, with or without cause;
- b. Either Party, or by DOE pursuant to an instruction to ATI, upon a material breach of any term of this Agreement by the other Party, if the other Party’s material breach is not cured within thirty (30) days written notice thereof;
- c. Either Party, or by DOE pursuant to an instruction to ATI, if the other Party files a bankruptcy petition that is not dismissed within ten (10) business days, the other Party is adjudicated bankrupt or is otherwise insolvent, or the other Party ceases to do business or otherwise terminates its business operations; or
- d. ATI upon any Event of Default if Selectee’s Event of Default is not cured within thirty (30) days written notice thereo.

- 1.12. **Post-Termination.** Selectee shall submit an invoice to ATI based on the prorated fixed price for that Milestone and such proration will be based on effort expended from the last Milestone payment up to the point of termination. The DOE Agreements Officer<sup>1</sup> (“AO”), in consultation with ATI and in their discretion, will determine if and how much of an appropriate prorated payment is warranted. Selectee acknowledges and agrees that no other compensation, of any nature or type, shall be payable hereunder following the termination of this Agreement.
- 1.13. **Remedies.** If either Party materially breaches any term of this Agreement or terminates this Agreement due to an Event of Default, in addition to any rights and remedies under this Agreement, the non-breaching or non-terminating Party shall have the right to exercise any and all remedies at law or in equity. All rights and remedies under this Agreement and at law or in equity are cumulative and shall not preclude one another. Notwithstanding any other term of this Agreement, a Party may immediately seek injunctive relief to protect Confidential Information or any intellectual property.

## ARTICLE II – PAYMENT

- 2.1. **Payment Method.** The Payment Method for this agreement is Firm Fixed Price Milestone with a not to exceed ceiling.
- 2.2. **Total Firm Fixed Price.** The total firm fixed price for the services to be provided by the Selectee is as follows:
- a. **Total Firm Fixed Price:** \$X (USD)
- 2.3. **Funding.** Funding for this Agreement is provided by PI Project Order CWX-XXX-XX.
- 2.4. **Payment.** ATI shall pay to Selectee a total sum of \$X (USD) in accordance with the Milestone and Invoice Schedule of Section II. If Selectee anticipates non-cancellable incurred costs, then the estimated cost(s) should be identified, substantiated, and addressed by proposing a modification to Milestone and Invoice Schedule of Section II.
- 2.5. **Payment Modification.** No modification, increase, or other adjustment to the fee of Section 2.4 or Section II may be made except those made by mutual agreement and executed by both Parties, in writing, and affixed to this Agreement.
- 2.6. **Invoices.** ATI’s payments to Selectee in accordance with Section 2.4 and Section II is expressly conditioned on Selectee’s submission of a sufficiently detailed invoice to ATI upon, and only upon, full completion of each Milestone as identified in the Milestone and Invoice Schedule of Section II, and DOE sponsoring office verification and acceptance thereof. Payments terms are NET 30 days after ATI’s receipt of an acceptable invoice. Selectee shall submit invoices and any necessary supporting documentation via email to [cwx-invoices@ati.org](mailto:cwx-invoices@ati.org). An acceptable invoice for fixed price milestone payments is one that:

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<sup>1</sup> **Cognizant Contracting Officer/Agreements Officer (AO):** A Government employee who can bind the Government to an agreement, such as an other transaction (OT) or similar agreement, with a partnership intermediary within the scope of the authority delegated to the CO by the cognizant HCA or by the Department’s Senior Procurement Executive (SPE).

- a. Is addressed to ATI and contains ATI's address: 315 Sigma Drive, Summerville, SC 29486
- b. Contains the date of invoice and the B2B number (CWX-XXX-XXX)
- c. Identifies the milestone number and deliverable description for any milestone(s) that are completed
- d. Lists the milestone price; and
- e. Includes DOE sponsoring office verification and acceptance thereof

2.7. **Taxes and Expenses.** Each Party shall be solely responsible for payment of its own respective income, social security, workers' compensation, other employment related, other foreign or domestic, and any other taxes of any type. All fees due to Selectee are expressly enumerated by this Agreement, and ATI shall not pay to Selectee any fees other than that indicated by Section 2.4 and Section II, or otherwise mutually agreed to by the Parties in writing, including any costs or expenses incurred by Selectee related to its performance of this Agreement.

2.8. **Payment After Default.** Notwithstanding Section 2.4 or Section II, ATI shall not pay to Selectee any fees, or portion of any fees, except to the extent required by Section 1.11, when (i) prohibited by any applicable Government law, regulation, or policy; or (ii) Selectee is in default pursuant to Section 1.9; or (iii) this Agreement is terminated pursuant Section 1.11(d). Furthermore, all fees due to Selectee under this Section 2.8 are expressly conditioned upon ATI's receipt of funding associated with Selectee's Services under the PIA.

### ARTICLE III – NON-DISCLOSURE AND INDEMNIFICATION

#### 3.1. **Non-Disclosure.**

- a. The Parties acknowledge that the terms of this Agreement and any written information, including intellectual property of any kind, exchanged between the Parties in connection with the preparation and performance this Agreement are regarded as the disclosing party's proprietary information ("BPI"). The parties agree that the results of the Services shall not be deemed BPI. The Parties may exchange BPI amongst each other, with the DOE Point of Contact(s) listed in Section II, and, only to the extent necessary for performance of a Party's obligations under this Agreement, with a Party's officers, members, managers, employees, agents, contractors, subsidiaries, successors, and assigns. Selectee's right to disclose BPI to any of Selectee's officers, members, managers, employees, agents, contractors, subsidiaries, successors, and assigns is expressly conditioned on Selectee acquiring such officers, members, managers, employees, agents, contractors, subsidiaries, successors, and assigns' written agreement either to this Section 3.1 or as a condition to any terms of confidentiality via the organizations employment contracts. Selectee shall not release ATI BPI to any third-party, except as allowed under this Section 3.1(a), unless:
  - i. The DOE AO has given prior written approval;
  - ii. Disclosure is required by the Freedom of Information Act or any other applicable law or regulation;
  - iii. Disclosure is required for Selectee to perform the Services as defined by Section II;
  - iv. The BPI is otherwise in public domain before the date of release;

- v. The BPI is limited to the content of the general agreement and objectives between DOE, ATI, and Selectee, and is used to establish network relationships and/or support activities for the partnership; or
  - vi. Disclosure of the BPI is requested pursuant to a subpoena issued by a court of competent jurisdiction; provided however that in this instance the Selectee shall provide ATI and DOE prompt notice of the subpoena and a reasonable opportunity, prior to any disclosure of the BPI, to formally object to the subpoena and/or seek an injunction or other relief from the court preventing disclosure of the BPI.
- b. Requests for approval under Section 3.1(a)(i) shall identify the specific ATI BPI to be released, the medium to be used, and the purpose for the release. Selectee shall submit its requests under this Section 3.1(b) simultaneously through ATI and to the DOE AO per the guidance provided in the SOE in Section II.
- c. Notwithstanding the permissibility of Disclosure of BPI under Sections 3.1(a)(i)-(v), Selectee will make reasonable efforts to notify and coordinate with ATI or DOE prior to disclosure of any ATI BPI such that ATI or DOE are aware of such disclosure and may request redactions to the extent permitted by law. If Selectee does not comply with a reasonable request for redactions, Selectee shall not disclose the associated ATI BPI.
- d. By entering into this Agreement, Selectee does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.
- e. The undersigned further attests that Selectee does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
- i. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling.
  - ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  - iii. Notwithstanding provision listed in paragraph Section 3.1(e)(i), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for

which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

- f. The terms of this Section 3.1 shall survive termination of this Agreement pursuant to Section 1.1 for a period of five (5) years thereafter.

### 3.2. Indemnification.

- a. Selectee shall defend, indemnify, and hold ATI, including its officers, members, managers, employees, agents, and representatives, harmless from and against any third-party claims, actions, or damages arising out of the negligent acts or omissions or willful misconduct of Selectee in performance under this Agreement, provided, however, Selectee shall not offer settlement in any such claim without the agreement of ATI, which agreement shall not be unreasonably withheld. Selectee shall be responsible for any claims, actions, or damages due to Selectee's own negligence or intentional acts. Failure of insurance coverage, if any, for any reason, shall not exonerate Selectee from its indemnity obligations hereunder. This obligation to defend shall include all costs of defense as they accrue. This Section 3.2(a) shall survive termination of this Agreement, for any reason, for a period of three (3) years thereafter.
- b. ATI shall defend, indemnify, and hold Selectee and its trustees, officers, employees, agents and representatives harmless from and against any third-party claims, actions, or damages arising out of ATI's performance under this Agreement, provided, however, ATI shall not offer settlement in any such claim without the agreement of Selectee, which agreement shall not be unreasonably withheld. ATI shall be liable to Selectee for any third-party claims, actions, or damages due to ATI's own negligence or intentional acts. Failure of insurance coverage, if any, for any reason, shall not exonerate ATI from its indemnity obligations hereunder. This obligation to defend shall include all costs of defense as they accrue. This Section 3.2(a) shall survive termination of this Agreement, for any reason, for a period of three (3) years thereafter.

## ARTICLE IV – ADHERENCE TO APPLICABLE POLICIES, REGULATIONS, AND LAWS

- 4.1. **Real Property and Equipment.** Real property and equipment purchased with project funds (federal share and Selectee cost share) under this Agreement must be used by Selectee in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the federal funding. Title to Selectee property acquired will conditionally vest upon acquisition with Selectee. Selectee cannot encumber this property and must request disposition instructions prior to disposing of or selling the property as long as it maintains a Current Fair Market Value of \$5,000 or more. Selectee may continue to use the real property and equipment after the conclusion of the agreement period of performance so long as Selectee submits a written Request for Continued Use for DOE authorization, which is approved by the DOE Agreements Officer (AO). The non-federal entity must comply with the property use, maintenance and insurance, and disposition requirements at 2 C.F.R. § 200.310-.316 unless explicitly directed otherwise, in writing, by the DOE AO. This Section 4.1 shall not apply if no project funds are used by Selectee to purchase real property or equipment.

- 4.2. **Access to Records.** In accordance with 42 U.S.C. § 7137, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of Selectee receiving Federal funds or assistance under this Agreement, including subagreements.
- 4.3. **No Conflicts of Interest, Other Activities.**
- a. **Performance of Work in the United States.** All work under this Agreement must be performed in the United States (i.e., Selectee must expend 100% of the total project effort in the United States) unless Selectee receives advance written authorization from ATI (in coordination with the DOE AO) to perform certain work overseas. To request a waiver for this requirement, Selectee shall submit a Foreign Work Approval Request via ATI's request procedure.
  - b. **Lobbying Restrictions.** By accepting funds under this Agreement, Selectee agrees that none of the funds obligated to this Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.
  - c. The DOE interim Conflict of Interest ("COI") Policy can be found at the following link: <https://www.energy.gov/management/pf-2022-17-department-energy-interim-conflict-interest-policy-requirements-financial>. The interim COI Policy is applicable to all non-Federal entities that receive DOE funding by means of a financial assistance award or other transactions and, through the implementation of this interim COI Policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under the DOE award. The interim COI Policy establishes standards that provide a reasonable expectation that the design, conduct, and reporting of projects funded wholly or in part under DOE awards will be free from bias resulting from financial conflicts of interest or organizational conflicts of interest. Selectee is subject to the requirements of the interim COI Policy, and Selectee must certify that it is compliant with all requirements in the interim COI Policy. Selectee must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities.
- 4.4. **Foreign Collaboration.** Selectee must provide ATI, for coordination with DOE, with advanced written notification of any existing or potential collaboration with foreign organizations or governments in connection with its DOE-funded agreement scope. Selectee must await further guidance from the DOE AO prior to contacting the proposed foreign organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- a. **Description of new and existing collaborations that should be reported:** In general, a collaboration will involve some provision of a thing of value to, or from, Selectee. A thing of value includes but may not be limited to all resources made available to, or from, the Selectee in support of and/or related to this Agreement, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). Collaborations do not include routine workshops, conferences, use of Selectee's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by Selectee staff in accordance with Selectee's standard policies and procedures.

- b. **Export Controls.** The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the United States to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” Selectee is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under this Agreement. Selectee must immediately report to ATI and DOE any Export Controls violations related to the project funded under this Agreement, at the Selectee sub level, and provide the corrective action(s) to prevent future violations.
- 4.5. **Suspension and Debarment.** In accordance with Executive Orders 12549 and 12689, the regulations at 2 C.F.R. Part 180, Guidance for Governmentwide Debarment and Suspension (Nonprocurement), are applicable to this Agreement.
- 4.6. **U.S. Competitiveness.** The Selectee agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless otherwise approved by DOE. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the United States economy. Selectee agrees that it will not license, assign or otherwise transfer any of its subject inventions to any entity, at any tier, unless that entity agrees to these same requirements. Should any entity receiving rights in the invention(s) from Selectee: (1) undergo a change in ownership amounting to a controlling interest, or (2) sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. ATI and Selectee, including Selectee's successors or assigns, will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. Selectee will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work. A subject invention is any invention conceived or first actually reduced in performance of work under an agreement. An invention is any invention or discovery which is or may be patentable. At any time in which an entity cannot meet the requirements of this Section 4.6, the entity may request a modification or waiver of this Section 4.6. For example, the entity may propose modifying the language of this Section 4.6 in order to change the scope of the requirements or to provide more specifics on the application of the requirements for a particular technology. As another example, the entity may request that this Section 4.6 be waived in lieu of a net benefits statement or United States manufacturing plan. The statement or plan would contain specific and enforceable commitments that would be beneficial to the United States economy and competitiveness. Commitments could include manufacturing specific products in the United States, making a specific investment in a new or existing United States manufacturing facility, keeping certain activities based in the United States or supporting a certain number of jobs in the United States related to the technology. If DOE, in its sole discretion, determines that the proposed modification or waiver promotes commercialization and provides substantial United States economic benefits, DOE may grant the request and, if granted, modify the Agreement terms and conditions for the requesting entity accordingly. This Section 4.6 is implemented by DOE pursuant to a Determination of Exceptional Circumstances under the Bayh-Dole Act and DOE Patent Waivers.
- 4.7. **OIG.** The mission of the DOE Office of Inspector General (“OIG”) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse, and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of DOE activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline

for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/office-inspector-general>. Selectee must disclose, in a timely manner, in writing to DOE all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this Agreement.

- 4.8. **Cost Share.** If the Cost Share Agreement terms are applicable to Selectee's Services, as indicated by Section III, Selectee shall execute Exhibit B and comply with the obligations set forth thereby.
- 4.9. **Cybersecurity Plan.** If a Cybersecurity Plan is required for the performance of Selectee's Services, as indicated by Section III, Selectee shall execute Exhibit C and comply with the obligations set forth thereby.
- 4.10. **NEPA.** If the National Environmental Policy Act ("NEPA") is applicable to Selectee's Services, as indicated by Section III, Selectee shall execute Exhibit D and comply with the obligations set forth thereby.
- 4.11. **CPS.** If the Current and Pending Support ("CPS") terms are applicable to Selectee's Services, as indicated by Section III, Selectee shall execute Exhibit E and comply with the obligations set forth thereby.
- 4.12. **Davis-Bacon Act.** If the Davis-Bacon Act is applicable to Selectee's Services, as indicated by Section III, Selectee shall execute Exhibit F and comply with the obligations set forth thereby.
- 4.13. **BABA.** If the Build America, Buy America Act ("BABA") is applicable to Selectee's Services, as indicated by Section III, Selectee shall execute Exhibit G and comply with the obligations set forth thereby.
- 4.14. **Confidentiality.** If special confidentiality consideration are applicable to Selectee's Services, as indicated by Section III, Selectee shall execute Exhibit H and comply with the obligations set forth thereby.
- 4.15. **Intellectual Property.** If Selectee's Services sufficiently involve intellectual property, as indicated by Section III, Selectee shall execute Exhibit L and comply with the obligations set forth thereby.
- 4.16. **Publicity and Publication.** The addendum which applies (either Exhibit M or Exhibit N) to appropriately address DOE's communications strategy for this Opportunity will be indicated in Section III.

#### **ARTICLE V – GENERAL TERMS**

- 5.1. **Insurance.** Each Party shall procure and maintain, at each Party's own cost and expense, throughout the term of this Agreement, insurance or indemnity protection that is reasonable or required by applicable relevant law. Selectee shall provide to ATI a certificate of insurance as evidence of such coverage upon ATI's written request.
- 5.2. **Site Visits.** DOE authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance if required. The Selectee must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.
- 5.3. **Assignment.** Selectee shall not assign or otherwise transfer its rights or obligations under this Agreement without express written consent of ATI and DOE. Any assignment or transfer made without such express written consent shall be void and constitute a material breach of this Agreement.

- 5.4. **Successors and Assigns.** This Agreement is for the sole benefit of the Parties hereto, and reference to a Party or the Parties shall include, as applicable, a Party's successors and permitted assigns. Nothing herein shall confer upon any other third-party any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement, unless expressly stated otherwise.
- 5.5. **Modification.** No amendment, modification, or supplement to this Agreement shall be effective unless in writing and signed by an authorized representative of each Party.
- 5.6. **Waiver.** No waiver by either Party of any term of this Agreement will be effective unless explicitly set forth in writing and signed by the waiving Party. No waiver by either Party will operate or be construed as a waiver of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after said waiver. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 5.7. **Force Majeure.** Neither Party shall be liable to the other Party for failure to perform any of its obligations under this Agreement, except for those obligations under Section 2.1 to the extent a Milestone has been met by Selectee, during any time in which such performance is prevented by fire, flood, or other natural disaster, pandemic, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the Parties, provided that the Party so prevented uses its reasonable best efforts to perform under this Agreement and provided further, that such Party provide reasonable written notice to the other Party of such inability to perform. Performance obligations of the Parties may be extended by the amount of delay caused by Force Majeure events under this Section 5.6, upon mutual written agreement.
- 5.8. **Dispute Resolution.**
- a. **In General.** The Parties must resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or alleged breach or invalidity hereof (each, a "Dispute"), pursuant to this Section 5.8. Provided, however, that the commencement of the Dispute resolution process set forth in this Section 5.8 shall not limit either Party's rights or remedies contained elsewhere in this Agreement.
  - b. **Dispute Resolution Procedures.** Any disagreement, claim or dispute between the Parties concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.
    - i. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under this Article constitute the basis for relief under this article unless the DOE Agreements Officer, in the interest of justice, waive this requirement.
    - ii. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement or misunderstanding by notifying the non-aggrieved Party in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought

and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the non-aggrieved Party, the aggrieved Party may, in writing, request a decision by the DOE Agreements Officer, and notify the non-aggrieved Party that a decision has been requested.

- iii. The non-aggrieved Party may submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The DOE PIA Technical Representative and the DOE Agreements Officer will conduct a review of the matter(s) in dispute and the AO will render a decision in writing no later than sixty (60) calendar days after receipt of the aggrieved party's request. Any such decision is final and binding, provided, however, that the party's have the right to pursue any right or remedy provided by law in a court of competent jurisdiction under Article 5.8(c).

- c. **Remedy.** Either Party may pursue any right or remedy provided by law in a court of competent jurisdiction as authorized by 28 U.S.C. § 1491. Alternatively, the Parties may agree to explore and establish an Alternate Disputes Resolution procedure to resolve the dispute.

- 5.9. **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, in no event will either Party be liable for any indirect, punitive, special, incidental, or consequential damages arising under or related to this Agreement, including, but not limited to, loss of profits, use, data, or other economic advantage. Provided, however, this Section 5.8 shall not apply if the breach is caused by a Party's willful, reckless, or negligent action, inaction, or omission.
- 5.10. **Corporate Felony Conviction and Federal Tax Liability Assurance.** This term applies to Selectees that are organized as corporations. A corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States, but not foreign corporations. It includes both for-profit and non-profit organizations. By entering into this Agreement, the Selectee attests that its corporation has not been convicted of a felony criminal violation under Federal law in the twenty-four (24) months preceding the date of Selectee's signature herein. The Selectee further attests that its corporation does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 5.11. **Governing Law.** The validity, interpretation, construction, performance, enforcement, and remedies of or relating to this Agreement, and the rights and obligations of the Parties to this Agreement, shall be governed and construed in all respects by the substantive laws of South Carolina, without regard to the conflict of laws rules or statutes of South Carolina or any other jurisdiction that might result in the application of other law.
- 5.12. **Venue.** All disputes arising under or related to this Agreement, to the extent allowed by Section 5.7 or other applicable Sections, shall be commenced and maintained exclusively in the federal or state courts situated in South Carolina, and all Parties hereby irrevocably submit to the jurisdiction and venue of any such court.
- 5.13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together are deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement. DocuSign shall have the same force and effect as an original signature.

- 5.14. **Severability.** If any term of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect the enforceability of any other term of this Agreement or invalidate or render unenforceable such term in any other jurisdiction. Upon a determination that any term is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to affect the original intent of the Parties as closely as possible in order that the rights and obligations contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 5.15. **Merger.** This Agreement, including and together with any related Exhibits, is the sole and entire agreement of the Parties with respect to the subject matter herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, whether written or oral, regarding such subject matter.
- 5.16. **Conflicts.** In the event of any conflict between, or any ambiguity caused by, the terms of this Agreement and its incorporated Exhibits, this Agreement shall control.
- 5.17. **Headings.** The headings or captions used in this Agreement are for reference purposes only and are not intended to be used or relied upon in interpreting or enforcing this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement as of the day and year first above written,

Advanced Technology International

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Selectee

UEI:

CAGE:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**SECTION II: STATEMENT OF EFFORT**

This page intentionally left blank. See separate document for Exhibit A, Statement of Effort.

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## **SECTION III: EXHIBITS**

### **Checklist of Requirements for the Selectee**

This DOE program or effort mandates that the Selectee adhere to specific requirements in addition to the T&Cs and SOE.

Per guidance from DOE, the following Exhibits apply to this program or effort. As such, the Selectee is subject to the requirements of each identified applicable provision, noted with an "X" in the Required column:

<b>Required</b>	<b>Exhibit</b>	<b>Requirement</b>
<b>Yes</b>	Exhibit A	Statement of Effort
<b>No</b>	Exhibit B	Cost Sharing Agreement
<b>No</b>	Exhibit C	Cybersecurity Plan
<b>No</b>	Exhibit D	National Environmental Policy Act (NEPA) Implementing Procedures Agreement
<b>No</b>	Exhibit E	Current and Pending Support (CPS)
<b>No</b>	Exhibit F	Davis-Bacon Act Requirements associated with the Bipartisan Infrastructure Law (BIL)
<b>No</b>	Exhibit G	Build America, Buy America Act
<b>No</b>	Exhibit H	Non-Disclosure Agreement (NDA)
<b>No</b>	Exhibit I	Intellectual Property (IP) Disclosure Form
<b>No</b>	Exhibit J	Intellectual Property
<b>No</b>	Exhibit K	Publicity and Publications without Federal Research Exception
<b>No</b>	Exhibit L	Publicity and Publications allowing Federal Research Exception

#### **Exhibit D: National Environmental Policy Act (NEPA) Implementing Procedures Agreement**

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on all information provided by the Performer, DOE has made a NEPA determination by issuing a categorical exclusion (CX) for all activities listed in the Statement of Objectives (SOO). The Performer is thereby authorized to use Federal funds for the defined project activities.

#### **Exhibit F: Davis-Bacon Act Requirements associated with the Bipartisan Infrastructure Law (BIL)**

Davis-Bacon Act Requirements are not applicable to this effort as it is not funded with Bipartisan Infrastructure Law (BIL) funds and it does not authorize use of these funds for construction, alteration, or repair work.

If construction, alteration, or repair work in excess of \$2000 occurs using BIL funds, Davis-Bacon Act Requirements will apply. [Davis-Bacon and Related Acts | U.S. Department of Labor \(dol.gov\)](#)

#### **Exhibit G: Build America, Buy America Act**

Buy American Requirements are not applicable to this effort. None of the funds provided under this agreement (federal share or recipient cost-share) may be used for may be used for construction, alteration, maintenance, and/or repair activities on public infrastructure. If a non- profit entity expends federal funds on public infrastructure projects, Buy American Requirements will apply. [Build America, Buy America | Department of Energy](#)

**Exhibit C**  
Cybersecurity Plan

This page intentionally left blank. See separate document for Exhibit C, The Cybersecurity Plan.

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