



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 nonprofit 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 Officer¹ ("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

¹ **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).

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. An acceptable invoice for fixed price milestone payments is one that:
 - 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 I and Exhibit J and comply with the obligations set forth thereby.
- 4.16. **Publicity and Publication.** The addendum which applies (either Exhibit K or Exhibit L) 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 By: _____
UEI: Name:
CAGE: Title:

Date:

SECTION II: STATEMENT OF EFFORT

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

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:

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

Exhibit B: Cost Sharing Agreement

Cost Sharing may be applicable in some instances. The Selectee's cost share for the budget must reflect the overall cost share ration negotiated by the parties. This ratio must be at least the statutory minimum based on the nature of the project.

- a. Cost Sharing Obligations. By accepting federal funds under this Agreement, the Selectee agrees that it is liable for the stated percentage of the total allowable project costs, as specified below:

The Selectee is required to pay the "Cost Share" amount as a percentage of the total project costs in each invoice period for the duration of the period of performance. If the project is terminated or is otherwise not funded to completion, the Selectee is not required to pay the entire "Cost Share" amount; however, the Selectee is required to pay its share (i.e., percentage) of the total project cost incurred to date as of the termination or end date of the Agreement.

- b. Source of Cost Share. Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:
 - i. Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;
 - ii. Include the following costs as allowable in accordance with the applicable cost principles:
 1. Cash;
 2. Personnel costs;
 3. The value of a service, other resource, or third-party in-kind contribution;
 4. Indirect costs or facilities and administrative costs; and/or
 5. Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);
 - iii. Exclude the following costs:
 1. Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;
 2. Proceeds from the prospective sale of an asset of an activity; or
 3. Other appropriated Federal funds.
 - iv. Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.
- c. Cost Share Recordkeeping. The Selectee is required to document and maintain records of project costs paid by DOE and project costs that the Selectee claims as cost sharing, including in-kind contributions. Upon request, the Selectee is required to provide such records to the PI, who will provide the records to the DOE Agreements Officer.
- d. Inability to Comply with Cost Sharing Obligations. If the Selectee determines that it might be unable to meet its cost sharing obligations, the Selectee is required to notify ATI immediately, who will notify the DOE Agreements Officer. The notification must include the following information:
 - i. whether the Selectee intends to continue or phase out the project, and

- ii. if the Selectee intends to continue the project, how the Selectee will pay (or secure replacement funding for) the Selectee's share of the total project cost.

If the Selectee fails to meet its cost sharing obligations, ATI will consult with the Agreements Officer and may terminate this Agreement or otherwise recover some or all of the financial assistance provided.

- e. Modifying Cost Sharing Contributions. The Selectee must notify the PI, who will submit and receive written authorization from the DOE Agreements Officer, before modifying the amount of cost share contribution.

<u>Government Share</u>	<u>Selectee Share</u>	<u>Total Project Cost</u>
\$ / %	\$ / %	
«Fed» / «Fpct»%	«App» / «Apct»%	«Total»

Exhibit C: Cybersecurity Plan

Performer agrees to meet Cybersecurity Plans requirements as determined by DOE.

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 E: Current and Pending Support (CPS)

Current and pending support is intended to allow the identification of potential duplication, overcommitment, potential conflicts of interest or commitment, and all other sources of support. As part of an application (white paper or proposal), the principal investigator and each senior/key person at the prime applicant and any proposed subaward level must provide a list of all sponsored activities, awards, and appointments, whether paid or unpaid; provided as a gift with terms or conditions or provided as a gift without terms or conditions; full-time, part-time, or voluntary; faculty, visiting, adjunct, or honorary; cash or in-kind; foreign or domestic; governmental or private-sector; directly supporting the individual's research or indirectly supporting the individual by supporting students, research staff, space, equipment, or other research expenses.

- i. All involvement in foreign government-sponsored talent recruitment programs must be identified in current and pending support.
- ii. For every activity, list the following items:
- iii. The sponsor of the activity or the source of funding
- iv. The award or other identifying number

The title of the award or activity:

If the title of the award or activity is not descriptive, add a brief description of the research being performed that would identify any overlaps or synergies with the proposed research.

The total cost or value of the award or activity, including direct and indirect costs and cost share:

For pending proposals, provide the total amount of requested funding. The award period (start date – end date).

The person-months of effort per year being dedicated to the award or activity:

If required to identify overlap, duplication of effort, or synergistic efforts, append a description of the other award or activity to the current and pending support. Details of any obligations, contractual or otherwise, to any program, entity, or organization sponsored by a foreign government must be provided on request to either the applicant institution or DOE. Supporting documents of any identified source of support must be provided to DOE on request, including certified translations of any document.

The information may be provided in the format approved by the National Science Foundation (NSF), which may be generated by the Science Experts Network Curriculum Vitae (SciENcv), a cooperative venture maintained at <https://www.ncbi.nlm.nih.gov/sciencv/>, and is also available at <https://www.nsf.gov/bfa/dias/policy/nsfapprovedformats/cps.pdf>.

The use of a format required by another agency is intended to reduce the administrative burden to researchers by promoting the use of common formats. Each current and pending support disclosure must be signed and dated and include the following certification statement: I, _____ [Full Name and Title], certify to the best of my knowledge and belief that the information contained in this Current and Pending Support Disclosure Statement is true, complete, and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. 3729-3733 and 3801-3812). I further understand and agree that (1) the statements and representations made herein are material to DOE's funding decision, and (2) I have a responsibility to update the disclosures during the period of performance of the award should circumstances change which impact the responses provided above. If the fillable PDF NSF format is used, the individual must still include a signature, date, and a certification statement using the language included in the paragraph above. If the online version is used in SciENcv, a signature, date, and a certification statement must be attached until the SciENcv website automatically attaches a certification statement. Definitions Current and pending support:

(a) All resources made available, or expected to be made available, to an individual in support of the individual's RD&D efforts, regardless of (i) whether the source is foreign or domestic; (ii) whether the resource is made available through the entity applying for an award or directly to the individual; or (iii) whether the resource has monetary value; and (b) includes in-kind contributions requiring a commitment of time and directly supporting the individual's RD&D efforts, such as the provision of office or laboratory space, equipment, supplies, employees, or students. This term has the same meaning as the term Other Support as applied to researchers in NSPM-33: For researchers, Other Support includes all resources made available to a researcher in support of and/or related to all of their professional RD&D efforts, including resources provided directly to the individual or through the organization, and regardless of whether or not they have monetary value (e.g., even if the support received is only in-kind, such as office/laboratory space, equipment, supplies, or employees). This includes resource and/or financial support from all foreign and

domestic entities, including but not limited to, gifts provided with terms or conditions, financial support for laboratory personnel, and participation of student and visiting researchers supported by other sources of funding. Foreign Government-Sponsored Talent Recruitment Program: An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at U.S. research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation. Senior/key personnel: an individual who contributes in a substantive, meaningful way to the scientific development or execution of a research, development and demonstration (RD&D) project proposed to be carried out with DOE award.

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

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the Selectee, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA). Selectees shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2000 on projects funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Selectee must comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.
- (6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
- (7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
- (8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the Selectee, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.
- (9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Selectee must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Selectee of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>. The Department of Energy has contracted with a third-party DBA electronic payroll compliance software application. The Selectee must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular Selectee, contractor, or subcontractor because they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver

A waiver must be granted before the award starts. The applicant does not have the right to appeal EERE's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see:

<https://www.dol.gov/agencies/whd/government-contracts/construction> and

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

Exhibit G: Build America, Buy America Act

This provision applies to designated Buy American Requirement for Infrastructure Projects.

A. Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

Domestic Content Procurement Preference Requirement- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—
(A) all iron and steel used in the project are produced in the United States;
(B) the manufactured products used in the project are produced in the United States; or
(C) the construction materials used in the project are produced in the United States.
Also referred to as the **Buy America Requirement**.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy -including electric vehicle (EV) charging. The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

Project- means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this award (federal share or Selectee cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost

of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Selectees are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The Selectee must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

The Selectee must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Selectee must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Selectee. The Selectee must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

When necessary, the Selectee may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Selectee name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and Selectee cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and Selectee cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the

Selectee seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;

- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the Selectee made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the Selectee to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Selectee should consider using the following principles as minimum requirements contained in their waiver request:

- **Time-limited:** Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Selectee should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- **Targeted:** Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- **Conditional:** The Selectee may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

DOE may request, and the Selectee must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

Exhibit H: Non-Disclosure Agreement (NDA)

PARTNERSHIP INTERMEDIARY AGREEMENT (PIA) OPPORTUNITY PARTICIPATION NONDISCLOSURE ACKNOWLEDGMENT

This acknowledgment must be completed by individuals prior to receiving applications, materials, or other related information pertaining to, and participation in a Department of Energy (DOE) Opportunity, facilitated by ATI through DOE's Partnership Intermediary Agreement (PIA). The acknowledgment provides for selected Selectees to understand the nondisclosure requirements associated with their participation in [Opportunity Name and sensitive activity description]. Individuals may not make unauthorized disclosures of information obtained during the course of the project.

In anticipation of my participating as in the [Project/Opportunity name] for the Department of Energy,

I, _____ (Print Name), acknowledge the following:

- (a) I understand that during the course of [Project/Opportunity name], I may obtain access to confidential or proprietary business, technical, or financial information belonging to the Government or other entities.
- (b) I agree to treat this information as proprietary and confidential and comply with agency procedures for the protection of such information (including electronic information) and use my best efforts to safeguard such information. I will not disclose the contents of, nor release, any such information to anyone either during or after the [Project/Opportunity name] process other than:
 - (1) To individuals within the review process that are directly concerned with the performance of this effort and who have executed this Conflict of Interest and Nondisclosure Acknowledgment;
 - (2) To other individuals designated by the DOE Contracting Officer or other DOE staff; or
 - (3) Pursuant to an order from a court of competent jurisdiction.
- (c) Whenever DOE furnishes any proprietary and confidential information to me, I agree to use such information only for the purpose of completing the work outlined in the Statement of Effort (Section II) and to treat the information obtained in confidence. Further, I will not use such information for my own private gain or the private gain of others. This requirement for confidential treatment applies to information obtained from any source, including the submitter, without restriction. Any notice of restriction placed on such information by either DOE or the submitter of the information shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of my duties, I will return all copies to the DOE office that initially furnished such information or I will destroy the files (paper and electronic) and certify to the Contracting Officer that I have done so.
- (d) 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.
- (e) In executing this acknowledgment, I agree to comply with all applicable laws, rules and regulations that apply to my participation in this DOE activity. I understand that any action I take which violates any applicable law, rule, or regulation could subject me to criminal liability, civil liability and or suspension and debarment or other administrative penalty.

Exhibit I: Declaration of Background Intellectual Property (IP)

Key items of Background Intellectual Property (that created, invested, authored or developed and owned or created prior to the Effective Date of the Agreement to which this Exhibit is attached) are listed in Exhibit K hereto. The listing should not be considered as all-inclusive.

Is there any background IP to declare?

Yes No

If Yes, please list existing IP, including inventor(s) and US Provisional Application Number(s):

Exhibit J: Intellectual Property

Selectee is subject to the U.S. Competitiveness Provision set forth herein that requires products embodying or made through a Subject Invention (as defined therein and in Section 37 of this Agreement) be substantially manufactured in the U.S. Implementation of the U.S. Competitiveness Provision for domestic small businesses and nonprofits is through the Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021. A copy of the DEC, available at <https://www.energy.gov/gc/determination-exceptional-circumstances-decs>, is incorporated herein.

For all other types of entities, the implementation of the U.S. Competitiveness Provision is through DOE patent waivers and policy.

Failure to comply with the terms of this Agreement, including but not limited to the U.S. Competitiveness Provision, may result in a loss of rights in Subject Inventions, including, but not limited to, forfeiture of retained rights. All Subject Inventions (conceived or first actually reduced to practice in the performance of the above identified agreement) must be timely reported at <https://www.nist.gov/iedison>.

Invention reporting is required regardless of any patent protection sought or the subject matter (e.g. software invention). Any manuscript describing the invention for publication or of any on sale or public use planned for an invention must be promptly reported through iEdison. For assistance with iEdison, please contact iedison@nist.gov. For assistance regarding DOE's administration of Subject Inventions or patents, please contact Intellectual Property Law (IPL) at (630) 283-7117 or Chicago-IP@science.doe.gov.

a. *Patents rights: Reserved.*

b. *Rights in data—general rule.*

i. Subject to sub-sections (ii) and (iii) of this Section, and except as otherwise provided by paragraph (iv) of this Section or other law, this Agreement is subject to the terms and conditions described in 2 CFR 910, Appendix A of Subpart D, Rights in Data General, which are hereby incorporated by reference.

ii. Normally, delivery of limited rights data or restricted computer software will not be necessary. However, if ATI, in consultation with DOE Patent Counsel and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, ATI, after negotiation with Selectee, may insert modified data provisions.

iii. If software is specified for delivery, or if other special circumstances exist, e.g., “open-source” treatment of software, then ATI, after consultation with DOE Patent Counsel and negotiation with Selectee, may include in the award special provisions requiring Selectee to obtain written approval prior to asserting copyright in the software, modifying the retained Government license, and/or otherwise altering the copyright provisions.

iv. *Rights in data—programs covered under special protected data statutes.*

(1) If a statute, provides for a period of time, which data produced under an agreement for research, development, and demonstration may be protected from public disclosure, then ATI after consultation with DOE Patent Counsel can insert a modified version of the data rights clause which may identify data or categories of data that the Selectee must make available to the public.

c. *Consultation with DOE Patent Counsel:* DOE Patent Counsel shall be contacted for any questions regarding the intellectual property or data provisions of this Agreement and must be consulted for Agreements issued to entities which are (i) not located in the United States, (ii) do not have a place of business located in the United States, or (iii) are subject to the control of a foreign government.

d. Background Intellectual Property for purposes of this Agreement (that which was created, invested, authored or developed and owned or created by a Party, DOE or the Government before the Effective Date of the Agreement, is identified on Exhibit K hereto.

Exhibit K: Publicity and Publications without Federal Research Exception

All work, communication, documentation, and participant details are Business Sensitive². Information may only be exchanged between parties working directly on the program. Requests for publication or distribution of information to media or outside parties must be made in advance in writing to ATI for coordination with DOE. No publication or distribution of information may be made prior to DOE approval, and such information will be withheld from public disclosure to the extent permitted by law, including the Freedom of Information Act. Without assuming any liability for inadvertent disclosure, the Parties will seek to limit disclosure of such information to their respective employees on a need-to-know basis, and to outside reviewers only when necessary and in coordination with DOE. This restriction does not limit the U.S. Federal Government's right to use the information if it is obtained from another source.

- a. Each Party shall not authorize or commission the publication of the results of the Services performed under this Agreement or any promotional materials containing any reference to the other Party unless:
 - i. The Party receives prior written approval of the other Party, which shall not be unreasonably withheld; or
 - ii. The results of the Services do not directly incorporate BPI received from ATI or DOE, or were developed independently of BPI received from ATI or DOE, if any, so long as:
 1. Any manuscript, draft, or other copy of any material for publication is provided to ATI thirty (30) days prior to submission to any entity for publication or potential publication; and
 2. Any abstract or other summary for publication is provided to ATI seven (7) days prior to submission to any entity for publication or potential publication.

Scientific and Technical Information (STI) generated under this Agreement will be submitted to DOE via the Office of Scientific and Technical Information's Energy Link ("E-Link") system. STI submitted under this Agreement will be disseminated via DOE's OSTI.gov website subject to approved access limitations. Citations for journal articles produced under the Agreement will appear on the DOE PAGES website.

- b. Scientific and Technical Information submitted to E-Link must not contain any Protected Personal Identifiable Information, limited rights data (proprietary data), classified information, information subject to Export Controls, or other information not subject to release under this Agreement or otherwise.

² **Business Sensitive Information (BSI)** refers to documents and data which are not considered to be private, but for which certain protections may be required. Trade secrets, information which falls under non-disclosure agreements, and data subject to copyrights or patents may be considered BSI, as disclosure of such information to a competitor could cause substantial harm to the enterprise(s) and/or individual(s).

Exhibit L: Publicity and Publications allowing Federal Research Exception

All work, communication, documentation, and participant details are Business Sensitive. Notifications of any planned media engagements and publications must be made in writing to ATI to provide advanced notice to DOE.

DOE acknowledges Selectee's ability to participate in public outreach activities without prior approval so long as they are in furtherance of the objectives of the [Project] (as described in the SOE) and Selectee notifies DOE afterwards. When possible, DOE requests an opportunity to review and provide prior approval to written statements and to review any questions provided in advance of media interviews.