

# **Homeland Security Technology Consortium (HSTech)**

## **ARTICLES OF COLLABORATION**

These Homeland Security Technology Consortium (HSTech) Articles of Collaboration (“Articles”) made as of the 16th day of October 2019 (the “Effective Date”) supersedes the HSTech Articles of Collaboration made as of the 13th day of July, 2012, by, between, and among the following parties:

The current HSTech Membership Listing is available at the following website: <https://hstech.ati.org>.

**WHEREAS**, the Government has expressed an interest in collaborating, with a focus on nontraditional defense contractors and small businesses, in research and development leading to development and maturation of prototype projects for critical border security technologies to enhance the U.S. Department of Homeland Security’s border protection capabilities;

**WHEREAS**, the HSTech members wish to collaborate to provide quick and efficient delivery of critical border security technologies to enhance the U.S. Department of Homeland Security’s border protection capabilities to be conducted in partnership with the Government and HSTech members;

**WHEREAS**, the HSTech members concurrently wish to develop, sustain and expand their collective technical superiority;

**WHEREAS**, the HSTech members wish to provide a unified and compelling message regarding the strategic importance of border security technologies in current and future systems;

**WHEREAS**, the HSTech members wish to define programs and obtain program funding that is focused on the development, demonstration and transition of key technologies that will result in current border security system improvements or the fielding of new systems;

**WHEREAS**, the OT Agreement provides, among other things, for the grant of certain rights and obligations arising out of the research programs and projects conducted by the Government and the HSTech members pursuant to these Articles;

**WHEREAS**, the HSTech Members are entering into these Articles in order to provide for (i) a consortium to conduct research, development, and prototyping of projects and programs through an Other Transaction Agreement or other agreements, (ii) their respective rights and obligations as a Member of the consortium, and (iii) administrative matters pertaining to the conduct of activities as Members of this consortium;

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

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

## **DEFINITIONS**

HEREINAFTER the following definitions apply:

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

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

**Base Agreement** means the agreement between the HSTech Consortium Management Firm and the HSTech Member organization which serves as the baseline agreement for all future Project Agreements. The Base Agreement flows down applicable terms and conditions from the OTA between the Government and the HSTech.

**HSTech** means the Homeland Security Technology Consortium, which is made up of consortium Members from industry, academia, and non-profit organizations pursuant to these Articles.

**Consortium Management Firm (CMF)** refers to the organization acting on behalf of the HSTech (not as an agent of any individual Member) to negotiate, execute and administer the HSTech's efforts under an OTA. The Consortium Management Firm's purpose is to perform the specific Consortium Management duties as specified in the OTA between the Government and HSTech, as well as provide support to the operations of HSTech as determined by the HSTech Executive Committee. The Consortium Management Firm will be prohibited from performing prototype research under the OTA.

**Member or Members** means respectively an individual HSTech Member organization or the HSTech Member organizations collectively that are signatories to the HSTech Articles of Collaboration.

**Nontraditional Government Contractor** has the same meaning as the term nontraditional defense contractor in 10 U.S.C. § 2302(9). Nontraditional government contractor means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Federal Government for the procurement or transaction, any contract or subcontract for the Federal Government that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section. A nontraditional government contractor can be at the prime level, team members, subcontractors, lower tier vendors, or "intra-company" business units; provided the business unit makes a significant contribution includes supplying new key technology or products, accomplishing a significant amount of effort, or in some other way causing a material reduction in the cost or schedule or increase in the performance. Nontraditional government contractors will be required to provide a DUNS number.

**Other Transaction Agreement or OTA** means the agreement which is entered into by the Government and the CMF on behalf of the HSTech.

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

**Management Service Agreement or MSA** is the agreement between the Homeland Security Technology Consortium and Advanced Technology International for the purpose of providing professional management services necessary for effectively managing the business affairs of the HSTech.

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

The HSTech shall operate with the following principal goals: (i) to develop various border security capabilities such as but not limited to monitoring, surveillance, communications, fencing and infrastructure, and other supporting technologies that advance the state-of-the-art; (ii) to improve U.S. industry, government and academia capabilities to sustain U.S. border protection in the research, development, engineering and production of border security - related systems; and (iii) to insert these technologies into legacy and developmental platforms as quickly and efficiently as possible. Through the HSTech established by these Articles, Members may propose and perform research, development and engineering activities, in cooperation with the Government, to address the Government's long range science and technology objectives.

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

- Establish sound technical and programmatic performance goals based on the needs of the user;
- Develop information which will allow the Government to create and maintain a Border Security Technology Plan that defines performance goals and maximizes the utilization of the Government, industry and academia team's capabilities;
- Provide a unified voice for effectively articulating the strategically important role border security technologies play in current and future border protection systems;
- Collaboratively and collectively provide the Government with input and advice on non-proprietary, non-confidential technical concepts and issues;
- Create programs and secure funding focused on the development of key technologies and border security systems improvements;
- Effectively develop critical technologies that can be rapidly and affordably transitioned to the end user, including but not limited to the following domain of capability areas: surveillance and monitoring; identification and assessment; targeting and intelligence; communications and information management; apprehension, detention, seizure and removal; and other border security – related capabilities;
- Enter into an the OT Agreement with the Government to provide the Government assistance and expertise in developing and executing border security endeavors by performing certain research and development (including prototype projects) in the area of border security, to be conducted in collaboration with the Government and the Members. The Members hereby establish collaborative research efforts of limited duration to gain further knowledge and understanding of border security technologies required as more particularly described or identified in the OT Agreement with the Government for the purposes as set forth therein.

#### **ARTICLE 2: CONSORTIUM MEMBERSHIP**

**Membership.** The HSTech will be open to and include Members from industry, academic research institutions, and non-profit organizations. The Members adopt a non-exclusive, open membership policy. The Members will include additional Members in accordance with the provisions contained in the HSTech

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

**Membership Dues.** HSTech Members will pay non-refundable annual dues every January 1<sup>st</sup> in the amounts listed as follows: \$1,000 for large and mid-size businesses and \$500 for all others (small businesses, academic institutions, and nonprofits). New Members will pay pro-rated dues payable upon initial acceptance of membership and then annual dues thereafter. The pro-rated dues structure, based upon the date of initial application acceptance, is as follows:

**Large & Mid-size Businesses:**

- a) January through March - \$1000
- b) April through June - \$750
- c) July through September - \$500
- d) October through December - \$250

**All others:**

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

Small Business Administration (SBA) size standards will be used to determine business size. Small business size standards define the largest that a business concern, including all of its affiliates, may be and yet qualify as a small business concern for SBA and most other federal programs. Large businesses (\$5B or greater worth), mid-size businesses (less than \$5B worth).

**Project Award Assessment.** In addition to any initial and annual dues that all Members of the HSTech are required to pay, each HSTech Member Organization receiving a Project Agreement under an OTA executed between the Government and the HSTech is subject to an award assessment. This award assessment shall not exceed one percent (1%) of the authorized contract value. This assessment percentage will be evaluated by the HSTech Executive Committee on a periodic basis and may be adjusted from time-to-time in order to maintain a reasonable HSTech operating reserve.

**Obligations to be a Member in Good Standing.**

- a) Current (no greater than 60 days past due) on membership dues
- b) Current (no greater than 60 days past due) on any project award assessment

Only members in good standing will be permitted to respond to solicitations for project awards.

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

- a) Be a U.S. firm or institution organized or existing under the laws of the United States, its territories, or possessions. For the purposes of this Agreement, any agency or instrumentality of a foreign government and firms, institutions or business organizations that are owned or substantially controlled by foreign governments, firms, institutions or individuals, may only be considered for membership on a case-by-case basis through exception granted by the HSTech Executive Committee, with the concurrence of the relevant Government Program Office.
  - If Applicant is a Corporation with subsidiaries or affiliates, Applicant's membership will include its wholly-owned and controlled and majority-owned and controlled U.S. subsidiaries and affiliates who qualify as a U.S. person under the ITAR.
  - Any other subsidiaries or affiliates may not participate in the HSTech unless and to the extent approved by the Executive Committee upon a request by the Government.
- b) Not be barred from contracting with or receiving funds from the United States Government;

- c) Clearly demonstrate in their membership application that they are capable of making a technical contribution to the advancement of border security related technology;
- d) Contribute their respective talents and resources to the HSTech for activities such as periodic meeting attendance, committee and subcommittee participation, and other activities as may be appropriate;
- e) Not transfer membership to any third party;
- f) Provide all cost and technical data as required in any HSTech solicitation to which it responds
- g) Abide by the terms of the Base Agreement.

### **ARTICLE 3: CONSORTIUM GOVERNANCE**

**Executive Committee.** The affairs of the HSTech shall be governed by an Executive Committee which shall not exceed eleven (11) elected representatives from Member organizations, each to serve for a term of three (3) years. The Executive Committee shall be composed of, at a minimum, of one (1) representative from each of the following: a large business (\$5B or greater worth), mid-size business (less than \$5B worth), small business (as defined by SBA) or non-profit, and academia. The Executive Committee Officers shall include a Chairperson, a Vice-Chairperson, and a Treasurer, to be elected by the Executive Committee. The Executive Committee will establish an annual rotation cycle of approximately one-half of the committee members. The Executive Committee will assume responsibility for implementing firewalls or such other measures to protect competitively sensitive information of the Members and to avoid and mitigate potential organizational conflicts of interest. The oversight of such duties may be transferred to the Consortium Management Firm.

Any person serving on the Executive Committee may be relieved of his/her position at any time for cause or for no cause by a two-thirds (2/3) vote of the HSTech Executive Committee Members. Unless stated otherwise in these Articles, decisions of the Executive Committee shall require a majority vote of the committee members that are present.

HSTech Executive Committee members do not have access to member's proprietary data, are not provided advance insight of potential government solicitations, and do not have advanced insight of source selection decisions made by the Government.

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

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

**Chairperson.** The Chairperson shall preside over all meetings of the Executive Committee, performing all duties customary to that office and supervising and controlling all of the affairs of the Executive Committee in accordance with policies and directives approved by the Executive Committee. The Chairperson shall be authorized to sign the OT Agreement and subsequent modifications to the OT Agreement, on behalf of the HSTech.

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

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

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

**Subcommittees.** The Executive Committee shall have the authority to form subcommittees comprised of representatives from Member organizations to advise the HSTech and if applicable the Government on topics of special interest to the Members.

**Consortium Management Firm.** Advanced Technology International is the Consortium Management Firm that will administer the affairs of the HSTech under the direction of the Executive Committee. The Consortium Management Firm is prohibited from participating in technical project work of the HSTech. The Chairperson of the Executive Committee shall sign the management services agreement with the selected Consortium Management Firm as authorized by the Executive Committee. The Chairperson of the Executive Committee is authorized to communicate with the Consortium Management Firm on behalf of the Executive Committee.

The Consortium Management Firm shall:

- Act as the point of contact for the HSTech;
- Represent the Executive Committee in negotiating with the Government on issues involving the OTA;
- Have signature authority as delegated by the Chairperson;
- Provide “single point contracting” functions as needed to execute the OTA and MSA;
- Guard against the disclosure of competitively sensitive information and, together with the Executive Committee, institute policies and procedures to prevent potential violations of antitrust law;
- Together with the Executive Committee, take appropriate steps to avoid organizational conflicts of interest among the Members and to mitigate such conflicts if they cannot be avoided;
- Be responsible for the daily management of the HSTech;
- Request nominations, prepare a slate of candidates for any open committee positions, provide notice of committee membership and membership changes to the Members and the Government, provide

notice of the Executive Committee meetings and a request for agenda items to the Members, and provide notice of Member additions and deletions to the Government.

- File with the U.S. Attorney General and the Federal Trade Commission changes in Membership in accordance with the provisions of the National Cooperative Research Act of 1984 within 90 days of approval of the Articles of Collaboration;
- Manage the finances of the HSTech to include invoicing, collecting, and tracking membership dues/ projects assessments from Member Companies.

**Executive Director.** The Executive Director shall serve on the HSTech Executive Committee as a non-voting Member. The Executive Director oversees operations of the HSTech according to the policies, procedures, and strategic direction set by the Executive Committee and will serve as the single point of contact for the HSTech to the member, the Government, or their respective designees.

**Technology Director.** The Technology Director facilitates HSTech liaison with agencies of the Government that wish to seek technical input and advice from Members regarding non-proprietary border security - related technologies and system integration issues.

### **Article 3: Consortium Finances**

**Management of Consortium Funds.** The Consortium shall operate on the funds collected through membership dues and project award assessments. Such funds will be deposited in an account that shall be administered by the CMF under the direction of the Executive Committee.

**Payment.** The HSTech shall pay the CMF as compensation for the performance of the services based on the approved budget. Payments shall be made by the Consortium to the CMF monthly upon Treasurer's approval of invoices.

### **ARTICLE 4: TERM AND DISSOLUTION**

**Term.** Membership is renewed annually upon payment of non-refundable dues. Members may terminate membership at any time by written notice to HSTech; and in its sole discretion, HSTech may terminate a member's participation in the Consortium by written notice to a member should such member fail to comply with the Member Obligations set out in these Articles. In the event of the termination, Member's rights and obligations pursuant to any Project Agreements, including but not limited to, continued funding and technology contribution commitments shall continue in accordance with the specific terms of the Project Agreements. Further, financial obligations to the consortium, to include project assessments, shall remain in full force and effect until all outstanding obligations to the consortium are satisfied according to these Articles.

**Dissolution.** The HSTech may be dissolved by a two-thirds (2/3) vote of the Executive Committee. Upon dissolution or other termination of the HSTech, all remaining assets of the HSTech, after payment in full of all its debts, obligations, and necessary final expenses, or after the making of adequate provision thereof, shall be distributed to such tax-exempt organizations (with purposes similar to those of the HSTech) as shall be chosen by the then existing Executive Committee of the HSTech. In the event the then existing Executive Committee of HSTech cannot achieve a two-thirds (2/3) vote on the tax-exempt organization(s), the funds shall be distributed to the U.S. Treasury.

### **ARTICLE 5: INDEPENDENT CONTRACTOR STATUS**

The relationship of the Members established by the Articles of Collaboration is that of independent contractors. Nothing contained in these Articles shall be construed to (i) give any of the Members hereto the power to direct or control the day-to-day activities of another Member hereto, (ii) constitute the Members as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii)

allow any of the Members hereto to create, discharge or assume any obligation on behalf of another Member hereto for any purpose whatsoever. Each Member retains the right to engage independent research and activities that may compete with, or be contrary to, the goals of the HSTech.

**ARTICLE 6: INTELLECTUAL PROPERTY/ PROPRIETARY DATA**

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

Member organizations may be required to provide proprietary data to the CMF in order for the CMF to successfully satisfy its obligations under this agreement and the OTA. This agreement will govern the exchange and use of proprietary data between Members and the CMF. This Exhibit is not applicable to individual Consortium Members who decide to share proprietary information with each other unless they expressly agree to use these terms for that purpose.

**ARTICLE 7: GENERAL PROVISIONS**

**Amendments.** No amendment or modification of these Articles shall be valid unless agreed to by two-thirds (2/3) vote of the HSTech Executive Committee membership. All proposed amendments to these Articles shall be distributed to the Executive Committee members at least thirty (30) days prior to a proposed vote. The Executive Committee may, at its discretion, refer certain proposed amendments to the full HSTech membership for validation by a majority vote of the membership.

**Compliance with U.S. Export Laws.** The Members shall comply with all applicable export control laws and regulations of the United States, including the Arms Export Control Act (“AECA”), the International Traffic in Arms Regulations (“ITAR”), the Export Administration Regulations (“EAR”), and other U.S. Government directives related to export control.

**Governing Law.** This Agreement shall be governed by the laws of the State of New York, to the extent it does not conflict with the public academic research institution’s state law, without giving effect to its choice of law principles. In order to bring forth a dispute under this Agreement, the Party must first provide formal notification to the Executive Committee of the cause for the dispute. At which time, the Executive Committee and the Party will have 30 days to resolve the dispute until any further action is taken by either party.

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

**IN WITNESS WHEREOF,** the Member has caused the Articles of Collaboration to be executed by the duly authorized representative on the date entered below.

Member Organization Name:

By (Authorized Representative Printed Name):

Title:

Authorized Representative Signature: \_\_\_\_\_

Date: