

**CALL FOR SUBMISSIONS FOR
TRANSACTION ADVISOR PANEL – OUTSIDE COUNSEL
("Applicant Pay Basis")**

The CHIPS Program Office ("**CPO**") of the United States Department of Commerce (the "**Department**") is responsible for implementing the CHIPS Incentives Program established pursuant to Section 9902 of Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America – of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 15. U.S.C. §4652, as amended by the Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022 (Sections 102 and 105 of Pub. L. 117-167) (together, the "**CHIPS Act**"). Pursuant to this CFS, CPO invites submissions from law firms ("**Firms**") interested in serving on a panel to advise the Department on transactions under Section 9902 of the CHIPS Act (the "**Panel**"). Each Firm selected for the Panel will:

- Have superior qualifications and expertise in providing legal advice in complex financial transactions including grant, loan, loan guarantee, and other transactions; and
- Be prepared to provide legal services to the Department from time to time as outlined in this CFS and on an Applicant Pay Basis. "**Applicant Pay Basis**" means that the fees and expenses of the Department for a transaction will be borne solely by the applicant or sponsor (or another third party) and not by the Department. All transactions covered by this CFS will be on an Applicant Pay Basis. The Department shall have no obligation or liability to make any payments to Firms retained in connection with this CFS. However, the Department reserves the right to elect in the future to pay for certain fees and expenses associated with outside counsel legal services.

Submissions are due [DATE/TIME] (Washington, D.C. time). Please see Instructions to Firms, Annex A, for submission instructions, requesting any clarification, and communicating with the Department or CPO in respect of this CFS. In particular, all communications regarding this CFS should be directed to the following e-mail address: Advisors@chips.gov.

The documents that are attached are:

Annex A	Instructions to Firms (Pages 2-6)
Annex B	Form of Submission (Pages 7-38)
	1. Cover Letter and Eligibility Criteria
	2. Technical Capability and Financial Proposal
	3. Conflicts of Interest and Disclosure
	4. Guidelines for Transaction Advisors

We look forward to hearing from you.

Sincerely,

CHIPS Program Office
United States Department of Commerce

Burden Statement

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with an information collection subject to the requirements of the Paperwork Reduction Act of 1995 unless the information collection has a currently valid OMB Control Number. The approved OMB Control Number for this information collection is 06XX-XXXX. Without this approval, we could not conduct this information collection. Public reporting for this information collection is estimated to be approximately 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the information collection. All responses to this information collection are mandatory to obtain benefits. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden to the National Institute of Standards and Technology at: address, Attn: Cierra Bean, Business Operations Analyst, CHIPS Program Office, and askchips@chips.gov.

ANNEX A
INSTRUCTIONS TO FIRMS

1. Introduction

- 1.1 CPO invites Firms interested in being included on the Panel to provide a submission in response to this CFS (each, a “**Submission**”). The mission of the CHIPS Incentives Program is to catalyze long-term growth in the domestic semiconductor industry to support our national and economic security by financing major semiconductor manufacturing and related facilities through a combination of grants, loans, loan guarantees, and other transactions. For more general information on the CHIPS Incentives Program, please see the CHIPS website at www.chips.gov.
- 1.2 This CFS will be used to create a panel of Firms qualified to act as outside counsel for the Department on an “Applicant Pay Basis” in connection with transactions for which the Department retains outside counsel (“**Transaction Advisors**”). Although the Department will have no obligation to pay the fees and expenses of any Transaction Advisor in these matters, CPO will select Transaction Advisors, ensure that the work is being performed in accordance with the specified scope of work, and approve its invoices. In these matters, the Firm’s professional duties will be solely to the Department as its client.
- 1.3 A more specific description of the services that may be required is described below in Section 8.
- 1.4 The cost of preparing a Submission, providing any additional information, attending any meetings or making any oral presentations in connection with this CFS shall be borne by each Firm, regardless of the outcome of the CFS process.
- 1.5 Effective with the release of this CFS, all communications regarding this CFS should be directed to the following e-mail address: Advisors@chips.gov. Firms may submit requests for clarification to this CFS by sending an e-mail to Advisors@chips.gov no later than **[DATE/TIME]**. CPO may, whether at its own initiative, or in response to a clarification requested by a Firm, modify this CFS by addendum. CPO may, at its discretion, extend the deadline for Submissions.

2. Intended Schedule

The following schedule reflects the expected completion dates, but may be modified by CPO in its sole discretion (all dates are Washington, D.C. time):

◆ Issue Call for Submissions	[DATE/TIME]
◆ Deadline for Submitting Questions	[DATE/TIME]
◆ Submission Due Date	[DATE/TIME]
◆ Selection Date	[DATE/TIME]
◆ Firm Acknowledgement Date	[DATE/TIME]
◆ Implementation Date	[DATE/TIME]

3. Submission Due Date

Submissions must be submitted by e-mail in Microsoft Word or PDF format to Advisors@chips.gov by **[DATE/TIME]** (Washington, D.C. time).

4. Preparation of Submission

- 4.1 Firms should respond to this CFS clearly and concisely, omitting generalized public relations or business development materials. Please provide brief, clear examples of relevant expertise and value added.
- 4.2 Submissions should contain the Firm's best terms from a technical and financial standpoint.
- 4.3 **Submissions must follow the Form of Application provided in Annex B and should reproduce the questions and numbering used in that form. Submissions should not exceed twenty (20) pages (excluding (i) resumes of proposed Firm Team members and (ii) responses to the items requested in Annex B, Section 3, Conflicts of Interest Disclosure).**

5. Evaluation of Submissions

- 5.1 An evaluation committee (the "**Evaluation Committee**") comprised of CPO staff or other federal employees will carry out the initial evaluation of each Submission.
- 5.2 The Evaluation Committee will recommend Firms for inclusion on the Panel based on the following criteria:
- Eligibility Criteria: The eligibility criteria contained in Section 1.A of Annex B (Form of Application) are designed to ensure that, to the degree possible, only those Firms with the evident ability to satisfy the Department's basic requirements will provide Submissions and qualify for further consideration under this CFS.
 - Technical Capability: The technical capability and experience of: (i) the Firm, (ii) the Key Persons (as defined in Annex B) and (iii) the Firm Team (as defined in Annex B).
 - Financial Proposal: A Firm's ability to deliver timely, high-quality services, at reasonable fees.
 - References: CPO may check references (whether or not listed in the Submissions) for the Firms.
 - Conflicts of Interest: CPO will consider the responses to the items listed in Section 3 of Annex B (Conflicts of Interest Disclosure).
- 5.3 CPO reserves the right to verify any information contained in a Firm's response or to request additional information after the Submission is received.
- 5.4 During the evaluation process, CPO may select a short list of finalists ("**Short List**") from among the responding Firms. CPO may conduct discussions and meetings with, and request oral presentations from, all or some of the Firms on the Short List.
- 5.5 CPO reserves the right to discontinue the process contemplated by this CFS at any time and makes no commitments, implied or otherwise, that inclusion on the Panel will guarantee work or a revenue stream.

6. Final Selection for Panel

- 6.1 CPO will select Firms for inclusion on the Panel based on its sole and exclusive determination.

- 6.2 Based on the selection criteria outlined above in Section 5, the Evaluation Committee will recommend to the Chief Counsel for Semiconductor Initiatives of the Department's Office of General Counsel or their designee ("**Selecting Official**") the Firms to be included on the Panel. The Selecting Official will make the final determination regarding the Firms to be included on the Panel.
- 6.3 CPO will notify each Firm whether it has been selected for the Panel no later than the Selection Date noted above, unless extended.
- 6.4 Selected Firms will be included on the Panel upon their confirmation in writing to the Department of their participation on the Panel prior to the Firm Acknowledgement Date noted above, unless extended.
- 6.5 Firms included on the Panel are expected to be prepared to commence providing services as of the Implementation Date stipulated in Section 2 above, subject to the process outlined in Section 7 below, pursuant to which allocation of work assignments for any specific transactions will be made. While the Department expects to use the Firms on the Panel for services as outlined in the CFS, the Department is not bound to do so and selection as a member of the Panel is not a guarantee that the Firm will be engaged to provide legal services for the Department on specific transactions.
- 6.6 The Department reserves the right to terminate a Firm's status as a member of the Panel at any time, with or without cause. If a Firm is removed from the Panel, the Firm agrees to engage in a reasonable transition of any current matters to another Firm as directed by the Department.
- 6.7 Firms must provide notice to CPO when any Key Person (as defined in Annex B) leaves the Firm and may propose a replacement Key Person for approval at CPO's sole discretion. Firms must at all times have at least one approved Key Person.
- 6.8 The number of Firms selected for the Panel will be determined by the capabilities of the Firms responding to this CFS. In order to ensure that CPO continues to meet the evolving needs of the Department's business and clients and provide the best value to the Department's various stakeholders, CPO expects to review the Panel at least every five (5) years. However, CPO reserves the right to extend, restructure, revise or terminate the Panel at any time.

7. Selection for Specific Transactions

- 7.1 This CFS is designed to identify Firms suitable for inclusion on the Panel only, and is not an offer to work on a specific transaction. The need for Transaction Advisors and the selection of a Transaction Advisor for any particular transaction will be determined by CPO in its discretion on a case-by-case basis, as described below. CPO also reserves the right to retain transaction advisors not included on the Panel for any transaction (including Applicant Pay Basis transactions), depending on the facts and circumstances of the transaction (e.g., multi-lender transaction in which the lead lender (other than the Department) retains a firm not on the Panel and CPO determines it wants to share transaction advisors with the other lenders).
- 7.2 For any given transaction where CPO elects to retain a Transaction Advisor on an Applicant Pay Basis from the Panel, one or more of the Firms on the Panel will be asked to submit a proposal with regard to a specified scope of work. The determination as to which Firms will be asked to submit a proposal will be based on criteria determined by CPO in its sole discretion. Unless otherwise deemed advantageous to the Department by CPO based on the facts and circumstances of such transaction,

CPO will choose one of those Firms to advise the Department on such transaction. Criteria taken into account in selecting a Transaction Advisor may include:

- The technical capability of the Firm and, particularly, the individual Firm Team members that the Firm proposes for the assignment;
- The Firm's past performance when advising clients including, to the extent applicable, any past engagements by the Department;
- The Firm's financial proposal (e.g., hourly rates, estimate of time required to complete the assignment, discounts, caps or other mechanisms proposed, conditions attached to the proposal, etc.);
- Availability of the individuals proposed for the assignment and general distribution of existing work among Firms;
- The preferences, objections or potential conflicts of interest relating to other participants in the transaction, including the applicant sponsor; and
- Any other relevant factors as determined by the Department, including, but not limited to, any other policy or internal Department considerations.

7.3 The Firm will be engaged by the Department (using the Department's standard engagement documentation, see Annex B, Section 4, Guidelines for Transaction Advisors, with such modifications as the Department in its sole judgement deems appropriate from time to time), and will be accountable to the Department employee assigned to be the Firm's primary point of contact for the transaction ("**CHIPS Transaction POC**"). The Transaction Advisor will be expected to work closely with the CHIPS Transaction POC and keep the CHIPS Transaction POC informed of all significant transaction and Department policy-related issues.

8. Services Required

8.1 CPO is interested in identifying Firms with a serious interest in advising the Department on transactions in direct funding transactions (via grants, cooperative agreements, or other transactions), loans, and loan guarantees (collectively, "**CHIPS Incentives**") for eligible projects.

8.2 *Sample Scope of Work.* The following tasks would be typical of the range of services performed by the Transaction Advisor on a specific CHIPS Incentives transaction:

- Legal Due Diligence: Review project and transaction documentation and advise CPO.
- Term Sheet/Commitment Letter: Assist the Department's transaction team in negotiating and drafting the term sheet and commitment letter.
- CHIPS Incentives Documents: Assist in negotiating and drafting documentation of the applicable CHIPS Incentives, including without limitation the direct funding, loan and/or loan guarantee agreement, common terms agreement, project completion guarantee, security documents and intercreditor agreement (as applicable).
- Funding Documents (as applicable): Draft and explain to the applicant and their counsel the documentation for funding of the applicable CHIPS Incentives, and issue legal opinions to the Department (or review legal opinions prepared by applicant's counsel) that customary in such funding transactions.
- Local Counsel Advice: In reliance upon local counsel engaged by Transaction Advisor if necessary, drafting of local law documentation, local law due diligence, perfection of security in the relevant

jurisdiction and provision of local law advice generally.

- Closing: Coordinate closing of the transaction. Review or preparation of closing checklist and follow up on all conditions precedent to first disbursement (including, where applicable, those outlined in the funding documents); coordinate closing with local counsel and (where applicable) funding agents; preparation and negotiation of legal opinions and preparation, or review, of all customary closing certificates and documents, in timely and accurate fashion.
- Post-Closing (if requested by CPO): Coordinate the legal aspects of each subsequent disbursement. Render advice and assistance, including preparing forms of amendments, waivers, consents, restructurings, workouts, and preparation of monitoring memoranda, as necessary. In the event of a default scenario, enforcement of remedies and litigation in relation thereto.
- Legal Advice on Questions of Law: Provide legal advice in writing or in a meeting or teleconference on questions of substantive law relevant to a transaction or proposed transaction as requested by CPO (*e.g.*, securities law, tax law, creditor rights law, real estate law, corporate or partnership law, environmental and labor law).

**ANNEX B
FORM OF SUBMISSION**

Note that your Submission (including the Cover Letter and all Sections) should not exceed twenty (20) pages (excluding (i) resumes of proposed Firm Team members and (ii) responses to the items requested in Annex B, Section 3, Conflicts of Interest Disclosure).

COVER LETTER:

Include in your Submission a cover letter (the “**Cover Letter**”) containing (i) contact information for one person at the Firm with whom CPO will communicate regarding the Submission and (ii) the following signed confirmation by that person. Please submit documents with either an electronic signature or, if signed manually, scan and attach the signed form in your email submission to advisors@chips.gov:

On behalf of _____ (the “**Firm**”), I, _____, acknowledge that I have the authority to make this Submission and execute the below on behalf of the Firm. I further acknowledge that: (i) to the best of my knowledge all of the information submitted by the Firm in response to the Call for Submissions (“**CFS**”) is complete and accurate, and (ii) the Guidelines (as defined in Annex B, Section 4 of the CFS) have been reviewed by me and all other necessary parties within the Firm, and, if selected for the Panel, the Firm hereby agrees to comply with the provisions of such Guidelines.

Signature

Date

Printed Name and Title

Name of Firm

SECTION 1: ELIGIBILITY CRITERIA

Section 1 of your Submission must include responses to each item listed below (unless the item is not applicable).

SECTION 1.A. GENERAL ELIGIBILITY CRITERIA

To be included on the Panel, the Firm must respond “yes” to each of the three questions below (1.A.1(a), (b) and (c)).

	Question	Firm’s Response
1.A.1.	a) Is the Firm qualified to issue customary legal opinions under New York law for secured or unsecured debt transactions or other complex grant or finance transactions;	Yes/No
	b) Does the Firm Team (as defined below in Section 1.B.2), as a whole, have sufficient New York law expertise and experience in complex grant or finance transactions to enable the Firm Team (as defined below) to effectively advise the Department; and	Yes/No
	c) Do the Key Persons (as defined in Annex B) have experience (collectively)* i) advising senior secured lenders or grant-making governmental entities, ii) in at least three financings or grants [each exceeding \$500 million in principal amount], iii) that have reached financial close, and iv) in the last five years?	Yes/No
	d) Has the Firm been debarred, suspended, or otherwise excluded from receiving an award by the Federal Government or otherwise prohibited by Presidential Executive Order or law from receiving an award from the Federal Government?	Yes/No

*Transactions used by the Firm to respond affirmatively to questions 1.A.1(c), and the members of the Firm Team that worked on them should be specifically identified in the chart described below in Section 2.A.3. Clearly designate each such transaction on the chart with an asterisk.

SECTION 1.B. GENERAL FIRM INFORMATION AND FIRM TEAM

1.B.1. Firm Information & Key Person (Relationship Partner). Specify contact information for the Firm (e.g., address, phone, website). Specify the name, title and contact information for the senior Firm employees (no more than two) who the Firm proposes to manage the Firm’s relationship with the Department (each, a “**Key Person**”).

1.B.2. Firm Team & Resumes. Specify each Firm employee proposed to work on Department transactions (the “**Firm Team**”) and provide the information requested below. List only core members of the team (e.g., do not include very junior employees, administrative employees, or other employees you do not anticipate would be

frequently assigned to Department matters). Do not list more than 10 members.

If the Firm is selected for the Panel, the Firm may propose additional or different Firm Team members for any particular transaction.

Attach to the Submission a resume or biography for each member of the proposed Firm Team below (which may be excluded from the twenty (20) page limit for the Submission). Resumes should be succinct and specific, should focus on experience that is relevant to CHIPS Incentives transactions, as applicable, and should highlight the attorney's specific role in the listed transactions.

Name	Title	Years of Practice	Office Location	Bar Admissions (states and/or countries)	Area(s) of Expertise (indicate: Project Finance, Corporate Finance, Federal Grants Law, Environmental Law, Tax, Regulatory, Bankruptcy and Restructuring)

SECTION 2: TECHNICAL CAPABILITY AND FINANCIAL SUBMISSION

Section 2 of your Submission must include responses to each item listed below.

SECTION 2.A TECHNICAL CAPABILITY

EXPLANATORY NOTE TO SECTION 2A: CPO intends to select Firms for the Panel based on different areas of expertise so as to achieve a Panel that can advise the Department on a wide range of CHIPS Incentives Program transactions. Accordingly, a Firm does not need to have experience and expertise in all areas or locations to be considered for the Panel. Please focus on what you believe to be your firm's genuine strengths. Do not respond for a particular category if you do not have real strengths in the relevant area.

2.A.1. Provide the following information, indicating the item number next to each response:

2.A.1.a. : Brief profile of your Firm, including a description of the number and location of the Firm's offices, major practice areas relevant to CHIPS Incentives transactions, and number of employees working in such major practice areas.

2.A.1.b. : Description of the Firm's experience working with government-owned or -controlled financing parties, including peer federal credit programs focused on large transactions within the United States Government (e.g., at the U.S. Development Finance Corporation, the Export-Import Bank of the United States, the Department of Transportation, the Department of the Treasury, the Department of Energy and the Environmental Protection Agency), multilateral and bilateral development organizations, export credit agencies, and regional development banks. Note in your response which members of the proposed Firm Team have such experience and note whether such transactions have closed (if so, please indicate dates) or if such work is ongoing.

2.A.1.c. : Description of the relevant expertise and experience of the proposed Firm Team in the following areas, but only in those areas in which the proposed Firm Team has real strength. Firms are not required to be proficient in every area. Limit your response for each area to one-half of a page and no more than three pages in total for all areas.

- i) Project Finance
- ii) Corporate Finance
- iii) Federal grants law
- iv) Environmental law
- v) Tax
- vi) Regulatory
- vii) Bankruptcy and restructuring

2.A.2. Provide three names and contact information from past or current clients that the Key Persons have recently advised on matters similar to Department transactions and who you authorize to speak with the Department about your performance on their matters. Please indicate whether any individuals named, or members of their immediate families, are former employees of the Firm.

2.A.3. Provide a list of representative transactions undertaken by members of the proposed Firm Team where they advised lenders or grantors. Include only transactions that reached financial close in the past 5 years. Please use the chart below to provide this information and include no more than 15 total transactions.

2.A.3. Table of Representative Transactions

	Brief Transaction Description, including: • Name • Description • Client and role	Project Costs (US\$) • Total project costs • Amount of Total Debt or Direct Funding • Amount of Client's Debt/PRI	Firm Team Members Involved and Role of Each Team Member in Transaction¹	Dates of Substantial Work	Date of Financial Close
1)					
2)					
3)					
4)					
5)					
6)					
7)					
8)					
9)					
10)					

¹ If such Firm Team member was not at the Firm at the time of the engagement, indicate the firm or other organization at which the work was performed.

SECTION 2B: FINANCIAL SUBMISSION

EXPLANATORY NOTE TO SECTION 2B: Provide hourly rates (or a range of hourly rates) for each of the applicable experience categories in the table format provided below. If applicable, note whether such rates are discounted from the Firm's typical rates in the applicable table columns. If the Firm is selected for the Panel, note that proposed hourly rates (or range of hourly rates) for any specific transaction may not exceed the pricing provided below. Note whether these rates will increase in subsequent years, and, if so, what the maximum percentage annual increase would be.

Pricing Submission (Year 1: [MONTH] [YEAR] – [MONTH] [YEAR])

<i>Experience Category</i>	<i>Name of CHIPS Team members in experience category²</i>	<i>Hourly rate/ range for this CFS [YEAR]</i>	<i>Firm's regular rate for Department-like clients³</i>	<i>Percentage discount from such regular rate</i>	<i>Maximum percentage of yearly increase in rates</i>
Partners	[]	\$	\$	[]%	[]%
Counsel	[]	\$	\$	[]%	[]%
Senior Associate	[]	\$	\$	[]%	[]%
Junior Associates	[]	\$	\$	[]%	[]%
Paralegals		\$	\$	[]%	[]%
[Add additional categories as necessary]					

² There do not need to be Firm Team members in each category.

³ "Department-like clients" would include, for example, federal credit programs engaged in complex project finance or corporate finance transactions, multilateral and bilateral development organizations, export credit agencies, regional development banks, and other government-owned or controlled financing parties.

SECTION 3: CONFLICTS OF INTEREST DISCLOSURE

Section 3 of your Submission must include responses to each item listed below, based on reasonable due diligence. To the extent the Firm believes its ability to disclose any of this information is limited by existing contractual obligations or Firm policy, the Firm is expected to so state and to provide as much detail as possible to enable the Department to conduct a thorough assessment of the Firm's past and ongoing activities.

- 3.1. Describe any past or ongoing CHIPS-Related Activities (as defined below) in which the Firm, any Firm Team member, and any proposed subcontractor or consultant were or are engaged. Provide the name of the client (or indicate "self"), a description of the commercial relationship, services provided, including the title and links to publicly available publications or materials, and the period of performance.
 - 3.1.1. The term "CHIPS-Related Activities" means (i) any activity related to the implementation of Section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by the CHIPS Act of 2022 (the "**CHIPS Act**"), or any other potential or existing domestic or foreign semiconductor incentive programs related to semiconductor manufacturing facilities, (ii) any material participation in a statement of interest, pre-application or application for financial assistance under the CHIPS Act and (iii) any services to an Applicant (as defined below) in connection with the preparation of a statement of interest, pre-application or application for financial assistance under the CHIPS Act.
 - 3.1.2. The term "Applicant" means (i) any person or entity that the Firm knows, based on reasonable due diligence, is preparing or has submitted a statement of interest, pre-application, or application for financial assistance under Section 9902 of the CHIPS Act and (ii) any person or entity that is materially participating in a statement of interest, pre-application, or application or the preparation of a statement of interest, pre-application or application for financial assistance under the CHIPS Act, including, without limitation (1) any state or local government developing, offering, or providing incentives in connection with such an application; (2) any institution of higher education or training entity developing, offering, or providing workforce development, educational or research and development activities in connection with such an application; (3) any person or entity developing, offering, or providing financing in connection with such an application; and (4) any person or entity participating in an application by providing materials, equipment, other supplies, or purchase commitments in connection with such an application.
- 3.2. Describe any other past or ongoing services not covered by paragraph 3.1 that the Firm, any Firm Team member, and any proposed subcontractor or consultant have performed or are performing for any person or entity described in (i) of the definition of Applicant set forth in 3.1.2. Provide the name of the client (or indicate "self"), a description of the commercial relationship, services provided, and the period of performance.
- 3.3. Describe any actual, potential, or apparent Conflict of Interest (as defined below) relating to any past or ongoing work the Firm, any Firm Team member, and any proposed subcontractor or consultant have performed or are performing (including, but not limited to, any activities or services identified under paragraphs 3.1 and 3.2 above). Provide the name of the client (or indicate "self"), a description of the commercial relationship, services provided, the period of performance, and the nature of the actual, potential, or apparent conflict of interest.

- 3.3.1. The term “Conflict of Interest” means any past (going back to January 2021), current, or future activity or relationship that could render the Firm, any Firm Team member, or any subcontractor or consultant unable or potentially unable to render impartial assistance or advice to the Department free of the appearance or existence of bias or impaired objectivity, including (i) any conflict of interest pursuant to any applicable professional or ethical obligations and (ii) any other legally binding conflict restraints.
- 3.4. Provide the Organizational Conflict of Interest Plan (“OCI Plan”) of the Firm and any proposed subcontractor or consultant. The OCI Plan should, at a minimum, describe the policies and procedures for defining, identifying, mitigating, and avoiding organizational and personal Conflicts of Interest between the work to be performed under this Retainer Letter and any past, ongoing, and future work, as well as personal financial or employment relationships. The OCI Plan must include a description of the firewalls the Firm and any proposed subcontractor or consultant or will have in place to avoid improper disclosure of information by Firm Team members or relevant employees of proposed subcontractors or consultants.
- 3.5. Identify any registrations under the Lobbying Disclosure Act or the Foreign Agents Registration Act related to the development or implementation of any potential or existing domestic or foreign semiconductor incentive program related to semiconductor manufacturing facilities.

SECTION 4: GUIDELINES FOR TRANSACTION ADVISORS

EXPLANATORY NOTE TO SECTION 4: Please review the below guidelines and attached forms (collectively, the “*Guidelines*”).

A. Retention & Fee Arrangements. As noted above, the fees and expenses of the Firm for each transaction covered by this CFS will be solely on an Applicant Pay Basis. The anticipated documentation of these arrangements on each transaction is: (i) a retainer letter addressed to the Department and signed by the Firm (the “*Retainer Letter*”), which the Firm agrees will be substantially in the form attached hereto as Section 4, Appendix B, and (ii) a fee letter addressed to the Firm from the applicant, sponsor or other third party responsible for paying the Firm’s fees and expenses, and countersigned by the Firm (the “*Applicant Fee Letter*”), which the Firm agrees will be substantially in the form attached hereto as Section 4, Appendix A. These forms may be updated from time to time by CPO or modified to reflect specific transactions or circumstances by CPO.

B. Conflicts of Interest. The Firm’s engagement by the Department in matters under this CFS must not present any conflicts of interest. For purposes of identifying whether such conflicts exist, when requesting proposals for specific transactions, CPO will provide to the Firm, on a confidential basis, a preliminary list of other entities involved in or expected to be involved those specific transactions (the “*Conflicts List*”). The Firm (including its employees, experts, and advisors) must agree that it will not use the information provided in the Conflicts List for any purpose other than determining whether conflicts exist. In connection with any specific transaction for which the Firm is selected, the Firm will be required to: (1) provide a signed individual non-disclosure and conflicts agreement form for each attorney on the Transaction team, and (2) provide updated responses to the items requested in Annex B, Section 3, Conflicts of Interest Disclosure.

SECTION 4, APPENDIX A: FORM OF APPLICANT FEE LETTER

[Place on Company letterhead]

_____, _____
Firm Name and Address

Attn.: **Key Person**

RE: Services in connection with the proposed financing under CHIPS Incentives Program of **Name of project or transaction** (the "**Transaction**")

Dear **Name of Key Person**:

We understand that the CHIPS Program Office ("**CPO**") of the United States Department of Commerce (the "**Department**") requires legal services in connection with the proposed Transaction. For this purpose, we understand that the Department has approved the use of the firm of **Name of Firm** (the "**Firm**") from the date hereof.

As the [applicant][sponsor] in the transaction, we hereby agree, to promptly: *[(i)] pay all fees and expenses charged by the Firm that have been approved for payment by the Department*; *[(ii)] pay an initial retainer to the Firm in the amount of \$_____ (the "Retainer Amount")*; and, *[(iii)] from time to time thereafter, replenish the retainer to the Retainer Amount upon notification by the Firm*. We acknowledge our *[joint and several] obligation[s] to pay all fees and expenses of the Firm*, whether or not the Department's award the Transaction is provided, and/or whether or not incurred prior to the date hereof, pre-closing or post-closing. We acknowledge that the Department will not be responsible for any fees and expenses charged by the Firm related to the Transaction, and that if the **Retainer Amount** is not promptly replenished, the Firm shall, upon CPO's direction, cease working on the Transaction. We understand that, following termination of the engagement by the Department in connection with the Transaction, any unused **Retainer Amount** shall be returned to the applicant or the sponsors, as the case may be.]

It is our understanding that the rates per hour of your employees will be as follows:

Name	Standard Hourly Rate	[Discounted Hourly Rate]
Partner	\$000.00	
Counsel	\$000.00	
Senior Associate	\$000.00	
Junior Associate	\$000.00	
Paralegal	\$000.00	

We request that you provide, through the Department, statements identifying in reasonable detail the work performed by task or document, as applicable, during the relevant period, the total time billed therefore by the Firm, and the reimbursable expenses incurred, as well as aggregate amounts incurred to date.

We anticipate receiving your monthly invoices. We acknowledge that all fees and expenses represented by such invoices are due on presentation thereof, including at closing, and that the reasonableness of all fees and expenses invoiced shall be determined solely by the Department. Please forward all monthly statements and invoices directly to the Department so the statements and invoices can be reviewed with a view to redaction of privileged or otherwise sensitive information prior to submitting them to us. The determination as to redaction is solely in the discretion of the Department. We understand that your client is the Department.

In addition to fees, we will reimburse you for your reasonable expenses incurred in connection with the Transaction, including such items as document preparation and reproduction, travel expenses, courier and messenger services, and other similar items. We ask that your statements and invoices identify the types of these expenses in reasonable detail.

[The Firm agrees that it will not disclose information provided by the applicant in connection with the Transaction to any third-party without the applicant's prior written consent. The following types of information are not subject to the preceding sentence:

- i. information that at the time of disclosure by the Firm is generally known by or available to the general public;
- ii. information that at the time of disclosure by the Firm is legally known to the Firm at the time of disclosure from a source other than the applicant, unless the Firm knows or has reason to believe that the source obtained or furnished the information without legal authority; and
- iii. information that at the time of disclosure by the Firm has been furnished to the Firm by a third-party who legally obtained said information and the right to disclose it, unless the Firm knows or has reason to believe that the source obtained or furnished the information without legal authority.

Notwithstanding the foregoing, the Firm shall be permitted to disclose to the Department (including the Department's officers, employees, advisors, and agents) and any other governmental authority that has

a reasonable need to know in connection with the Transaction information provided by the applicant without the applicant's prior written consent.

The Firm agrees that it will not use information provided by the applicant in connection with the Transaction for any private commercial purpose or any purpose other than to evaluate the Transaction.]

The parties hereto agree that this letter agreement is subject to the consent of the Department to its terms and conditions. The parties hereto agree that they will not amend, modify, alter, or change in any way this letter agreement without the Department's prior written consent. The parties hereto agree that they will not assign their rights or obligations hereunder without the Department's prior written consent.

This letter shall be governed by, and construed and interpreted in accordance with the laws of the State of New York (without giving effect to its conflict of laws principles (except Section 5-1401 of the New York General Obligations Law)).

Please sign and return a copy of this letter to confirm your understanding of, and agreement with, the foregoing.

If you have not already done so, please commence your work on this matter upon receipt of this letter.

Very truly yours,

Name of Applicant or Sponsor

By _____

Name: _____

Title: _____

ACCEPTED AND AGREED:

Name of Firm

By _____

Name: _____

Title: _____

cc: **[Name of Department Agreements Officer]**

[_____]

United States Department of Commerce

cc: **[Name of Department Program Official]**

[_____]

United States Department of Commerce

SECTION 4, APPENDIX B: FORM OF RETAINER LETTER

[Place on Firm Letterhead]

CHIPS Program Office
United States Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Attn: **[Name of Department Agreements Officer]**

Re: Engagement of **Name of Firm** by the United States Department of Commerce (the "**Department**") in connection with financing of **Name of project or transaction** (the "**Transaction**").

Dear []:

This letter confirms that **Name of Firm** (the "**Firm**") will act as outside counsel for the Department in connection with the Transaction from the date hereof. Such engagement is being undertaken pursuant to Section 9902 of Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America – of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 15. U.S.C. §4652, as amended by the Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022 (Section 102 and 105 of Pub. L. 117-167) (together, the "**CHIPS Act**"). The Firm serves on a panel to advise the Department on transactions under Section 9902 of the CHIPS Act (the "**Panel**"). The Firm's engagement by the Department on the Transaction is subject to the understanding that the Department will not be responsible for any of the Firm's fees and expenses attributable to advising the Department in connection with the Transaction. The Firm agrees that the Firm will look only to **Name of Applicant or Sponsor** (the ["**Applicant**"] ["**Sponsor**"]) for payment of such fees and expenses, without recourse in any manner whatsoever to the Department. The Firm's responsibilities in connection with the Transaction and the terms upon which the Firm will advise the Department are set forth in **Attachment A** attached hereto.

Name of Key Person will have primary responsibility for the engagement. The Firm's fees are based upon the hourly rates and other terms and conditions set forth in a letter from the [**Sponsor**] [**Applicant**] (the "**Responsible Party**") to the Firm (the "**Sponsor/Applicant Fee Letter**").

The Firm will keep the CHIPS Program Office, on behalf of the Department, closely involved with the progress of the Firm's services in connection with the Transaction. The Firm will furnish to the Department monthly statements of fees and expenses (each, a "**Statement**"), which shall include a detailed summary of fees and out of pocket expenses (each, a "**Detailed Summary**").

The Firm will furnish all Statements via e-mail as follows to [] (the "**Department Agreements Officer**") and [] (the "**Department Program Official**") at [].

Each Statement will clearly indicate:

Transaction Number: **Insert project/transaction number**

Transaction Name: **Insert name**

Department Agreements Officer: **Insert name**

Department Program Official: **Insert name**

Each Statement will include the following in the Detailed Summary for the period covered by such Statement:

- (i) a detailed description of services rendered, including: (a) the date on which services were provided; (b) a brief description of each task performed; (c) the amount of time expended to perform the task; and (d) the identity of and billing rate for the person who performed the task; and
- (ii) a description of each out-of-pocket expense for which the Firm seeks reimbursement, including: (a) the date on which the expense was incurred; and (b) the nature of the expense.

Each Statement will indicate:

- (i) a statement of total fees and expenses for the period covered by the Statement; and
- (ii) a cumulative total of fees and expenses incurred from commencement of work on the matter and a cumulative total of fees and expenses paid to the Firm from commencement of work on the matter.

If more than one task was performed by an attorney or other time-keeper on the same day, the time for all tasks may be combined into one time entry, but separately set out in a detailed list or description to note the proportion of the total time spent on each task included therein. The Firm will maintain documentation evidencing all expenditures for out-of-pocket expenses incurred for CPO review, as necessary.

If the Firm is handling more than one CHIPS engagement matter at a time, a separate statement for each matter in the format described above will be submitted. We understand that CPO will not accept a single Statement covering multiple Department engagement matters.

We understand that CPO will forward or authorize the Firm to forward to the Responsible Party the Detailed Summary after reviewing, and, if necessary, redacting (or requesting the Firm to redact) such Detailed Summary to protect information deemed privileged or otherwise sensitive by CPO. The determination as to redaction is solely in the discretion of the Department.

At least five (5) business days prior to closing, the Firm shall provide to CPO an invoice that will include an estimate for the time expected to be incurred through the closing and for customary post-closing work, together with an estimate of expenses in connection therewith for transmittal to the Responsible Party after review, and redaction, if necessary, to protect privileged attorney-client information or other information deemed sensitive by CPO. Following closing, the Firm shall furnish to CPO Statements and Detailed Summaries of fees and expenses for services provided post-closing in connection with the

Project, as these fees and expenses may accrue from time to time, for transmittal to the Responsible Party after review and redaction, if necessary, to protect information deemed privileged or otherwise sensitive by CPO.

The Firm confirms that with respect to the Transaction: (i) there are no conflicts of interest with present or former clients of the Firm, and (ii) the Firm will provide high quality services in a cost- effective manner and in accordance with the highest ethical standards.

Further, the Firm hereby confirms that the Firm is subject to the terms of the Guidelines for Engagement of the Department of Commerce by Transaction Advisors in CHIPS Matters attached hereto as **Attachment B**, the terms of which are incorporated herein by reference, regarding engagement by other clients who are, or seek to be parties to matters in which the Department is a party. **Appendix III** sets forth updated responses to the items requested Section 3 (Conflicts of Interest Disclosure) of the Firm's Submission to the Department in response to the Department's Call for Submissions. The Firm will keep CPO apprised of all material developments in the Transaction, and any potential conflicts of interest that may arise with respect to the Firm's work on the Transaction.

Nothing in this letter shall constitute a waiver of otherwise applicable standards of professional responsibility that may restrict the Firm, or its employees, from being engaged by the Department in connection with the Transaction.

This letter shall be governed by, and construed and interpreted in accordance with, the federal law of the United States of America; provided that, to the extent that federal law does not specify the appropriate rule of decision for a particular matter at issue, the law of the State of New York (without giving effect to its conflict of laws principles (except Section 5-1401 of the New York General Obligations Law)) shall be adopted as the governing Federal rule of decision. This Firm may not assign its rights and obligations hereunder without the prior written consent of the Department Agreements Officer.

This letter, together with the Call for Submissions for Transaction Advisor Panel—Outside Counsel and the annexes and forms attached thereto (including the Instructions to Firms, Form of Submission, Form of Applicant Fee Letter, the Form of Retainer Letter); the Call for Submissions for Individual Transactions; the Sponsor/Applicant Fee Letter; any other retainer letter and sponsor/applicant fee letter entered into by the Firm from time to time; and the OTA Cover Sheet signed by the Department Agreements Officer (as updated from time to time) constitute the Other Transaction Agreement (OTA) (Agreement No. [____]), dated as of [DATE]., entered into by the Department's National Institute of Standards and Technology.

Upon executing the Applicant/Sponsor Fee Letter, we will forward a copy thereof for CPO's files to **Name of Firm Administrative Staff**.

Very truly yours,

NAME OF FIRM

By: _____

Partner

ACCEPTED AND AGREED:

U.S. DEPARTMENT OF COMMERCE

By:

Name:

Title: [Department Agreements Officer]

ATTACHMENT A TO RETAINER LETTER
(SCOPE OF WORK)

The Firm's responsibilities shall include the following tasks:

[INSERT SPECIFIC SCOPE OF WORK FROM REQUEST]

ATTACHMENT B TO RETAINER LETTER

GUIDELINES FOR ENGAGEMENT BY THE DEPARTMENT OF COMMERCE OF TRANSACTION ADVISORS IN CHIPS MATTERS

- (A) Introduction. The following guidelines (these “**Guidelines**”) set forth the policies of the United States Department of Commerce for the engagement of outside counsel for CHIPS Incentives Program transactions (each, a “**CHIPS Transaction**”) where the Department is the client but fees and expenses are paid by the applicant, the sponsor or another creditworthy entity. These Guidelines apply specifically to Firms that have agreed, by execution of the Retainer Letter to which these Guidelines are attached, to an engagement by the Department in connection with a specific CHIPS transaction (such engagement, the “**CHIPS Engagement**,” the project, transaction, or other matter giving rise to such engagement, the “**CHIPS Engagement Matter**”). Unless the context otherwise requires, capitalized terms used in these Guidelines and not otherwise defined shall have the meanings set forth in the Retainer Letter.
- (B) Appendices. In connection with the CHIPS Engagement, the Firm confirms to the Department that:
- (1) attached hereto as **Appendix I** are the names of the individual Firm employees who will constitute the team handling the CHIPS Engagement (such team the “**Firm Team**,” and each member of such team and any other employee involved in the CHIPS Engagement, a “**Firm Team Member**”), and the Firm employees who will have primary responsibility for the CHIPS Engagement (the “**Team Leader**”);
 - (2) attached hereto as **Appendix II** are individual non-disclosure and conflicts agreements, executed by each Firm Team Member as of the date of the Retainer Letter, concerning certain obligations set forth in Part C of these Guidelines (the “**Non-Disclosure and Conflicts Obligations**”); and
 - (3) attached hereto as **Appendix III** are updated responses to the items requested in Section 3 (Conflicts of Interest Disclosure) of the Firm’s Submission to the Department’s Call for Submissions.
- (C) Non-Disclosure and Conflicts Obligations. In connection with the CHIPS Engagement, the Firm agrees:
- (1) The information provided to the Firm and any Firm Team Member is made available solely for the purpose of providing services to the Department in connection with the CHIPS Engagement. That information may include trade secrets, proprietary information, other legally protected information, and internal Department materials,

communications, and deliberations that are subject to confidentiality protections by law or are otherwise not appropriate for public disclosure.

- (2) The following types of information are not subject to this Part (C):
 - a) Information that at the time of disclosure by the Firm is generally known by or available to the general public;
 - b) Information that at the time of disclosure by the Firm is legally known to the Firm at the time of disclosure from a source other than the Department, unless the Firm knows or has reason to believe that the source obtained or furnished the information without legal authority;
 - c) Information that at the time of disclosure by the Firm has been furnished by the Department to the public; and
 - d) Information that at the time of disclosure by the Firm has been furnished to the Firm by a third party who legally obtained said information and the right to disclose it, unless the Firm knows or has reason to believe that the source obtained or furnished the information without legal authority.
- (3) The Firm will not disclose information received during the CHIPS Engagement or prepared by the Firm during the performance of the CHIPS Engagement based on information received from the Department to any third party without the prior written consent of an authorized Department representative.
- (4) The Firm understands that unauthorized disclosure of such information may result in termination of the CHIPS Engagement and subject the Firm to civil and/or criminal penalties.
- (5) The Firm shall not use the information received during the CHIPS Engagement or prepared by the Firm during the performance of the CHIPS Engagement based on information received from the Department for any private commercial purpose, or any purpose other than to perform the services in connection with the CHIPS Engagement.
- (6) The Firm shall not leverage its government work to solicit private sector business. The Firm shall not, without the prior written approval from an authorized Department representative, refer to the CHIPS Engagement or the Firm's work in connection therewith, in any business development activities, advertising, publicity, or promotional materials.
- (7) The Firm shall not use any Department logos or insignia without appropriate written consent from an authorized Department representative.

- (8) The Firm agrees to follow any written instructions provided by the Department, its employees, and authorized representatives for the proper handling of any information received during the performance of the CHIPS Engagement.
- (9) The Firm shall establish and/or maintain operating procedures, screening measures, and/or physical security measures to appropriately protect the information received during the performance of the CHIPS Engagement from any inadvertent release or disclosure to any unauthorized third parties. The Firm shall segregate all information it receives from the Department to prevent commingling or disclosure to Non-Firm Team Members. **“Non-Firm Team Member”** means individual Firm employees who are not participating in work under this Call for Submissions.
- (10) Internal dissemination by the Firm of information received from the Department during the performance of the CHIPS Engagement shall be limited to Firm Team Members who have been informed of the confidential nature of the information and need such information to perform work in connection with the CHIPS Engagement.
- (11) The Firm agrees to indemnify and hold the Department, its agents, and employees harmless from every claim or liability, including attorneys’ fees, court costs, and any expenses arising out of, or in any way related to, the Firm’s disclosure or misuse of information received from the Department or prepared by the Firm during the performance of the CHIPS Engagement.
- (12) The Firm agrees that it shall return to the Department or destroy all information received by the Firm or prepared by the Firm during the performance of the CHIPS Engagement upon (a) demand by an authorized Department representative or (b) the completion or termination of the CHIPS Engagement, whichever occurs first.
- (13) In the event the Firm receives any legal notice from any third party that attempts to require the Firm to release any information subject to this Part (C), the Firm shall within three (3) business days provide written notice to the Department Agreements Officer and the Department Program Official, along with notice to any relevant third party of the notice received by the Firm.
- (14) In the event the Firm is involved in any litigation related to any information subject to this Part (C), the Firm shall within five (5) business days provide written notice to the Department Agreements Officer and the Department Program Official, along with any relevant third party, of such litigation.
- (15) The Firm shall immediately provide written notification to the Department Agreements Officer upon discovery of any unauthorized use or disclosure of any information or any other breach of this Part (C).

The Firm agrees to cooperate with the Department to assist the Department with regaining possession of any information, and to also prevent further unauthorized use or disclosure.

- (16) The provisions contained in this Part (C) 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 or the Office of Special Counsel 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 Part (C) and are controlling.
- (17) The Firm shall establish and/or maintain and abide by an Organization Conflict of Interest Plan (“**OCI Plan**”). The OCI Plan shall, at a minimum, describe the Firm’s policies and procedures for defining, identifying, mitigating, and avoiding organizational and personal Conflicts of Interest (as defined in Section 3.3.1, “Conflict of Interest Disclosure”) between the work the Firm performs in connection with the CHIPS Engagement and any past, ongoing, and future work. The OCI Plan must include a description of the procedures the Firm will have in place to ensure compliance with this Part (C), including the firewalls the firm will have in place to avoid improper disclosure of information by Firm Team Members to Non-Firm Team Members. .
- (18) The Firm shall submit to the Department Agreements Officer for approval on a case-by-case basis a plan to mitigate a specific actual, potential, or apparent Conflict of Interest between the work to be performed in connection with the CHIPS Engagement and any past, ongoing, or future work for other clients.
- (19) The Firm understands that an actual, potential, or apparent Conflict of Interest may arise from a Firm Team Member performing CHIPS-Related Activities (as defined in Section 3.1.1, “Conflict of Interest Disclosure”) for another client, a Firm Team Member performing non-CHIPS-Related Activities for an Applicant (as defined in Section 3.1.2), a Non-Firm Team Member performing CHIPS-Related Activities for another client, or a Non-Firm Team Member performing non-CHIPS-Related Activities for an Applicant. An actual, potential, or apparent Conflict of Interest may also arise from employment, stock ownership, a creditor or debtor relationship, prospective employment, or any activities or relationships that could render the Firm unable or potentially unable to render impartial assistance or advice to the Department free of the appearance or existence of bias.

- (20) The Firm hereby affirms that, to the best of its knowledge and upon reasonable due diligence and inquiry, it does not have any actual, potential, or apparent Conflict of Interest with respect to any service provided in connection with the CHIPS Engagement.
- (21) The Firm agrees that, to avoid actual, potential, or apparent Conflicts of Interest, for the duration of the CHIPS Engagement, the Firm shall not perform CHIPS-Related Activities for any person or entity described in clause (i) of the definition of Applicant set forth in Section 3.1.2, "Conflict of Interest Disclosure," unless the Firm: (1) fully discloses and submits to the Department Agreements Officer and the Department Program Official a description of the proposed engagement, (2) proposes a plan to mitigate any actual, potential, or apparent Conflict of Interest, and (3) obtains written authorization from the Department Agreements Officer. Failure to comply with this provision may result in termination of the CHIPS Engagement or removal from the Panel.
- (22) The Firm agrees that, to avoid actual, potential, or apparent Conflicts of Interest, for the duration of the CHIPS Engagement, the Firm shall not perform CHIPS-Related Activities for any person or entity described in clause (ii) of the definition of Applicant set forth in Section 3.1.2, "Conflict of Interest Disclosure," unless the Firm: (1) fully discloses and submits to the Department Agreements Officer and the Department Program Official a description of the proposed engagement and (2) proposes a plan to mitigate any actual, potential, or apparent Conflict of Interest. Failure to comply with this provision may result in termination of the CHIPS Engagement or removal from the Panel.
- a) The Firm agrees to expressly disclose if the CHIPS-Related Activities the Firm expects to perform for any person or entity described in clause (ii) of the definition of Applicant set forth in Section 3.1.2, "Conflict of Interest Disclosure" include—or may potentially include—issuing a public report(s), and agrees that the Firm's mitigation plan must expressly address how it will ensure that the views expressed in any such public report will not present an actual, potential, or apparent Conflict of Interest. Failure to comply with this provision may result in termination of the CHIPS Engagement or removal from the Panel.
- (23) The Firm agrees that to avoid actual, potential, or apparent Conflicts of Interest, for the duration of the CHIPS Engagement and one (1) year thereafter, Firm Team Members shall not perform CHIPS-Related Activities for another client who is also an Applicant (as defined in Section 3.1.2, "Conflict of Interest Disclosure") unless the Firm: (1) fully discloses and submits to the Department Agreements Officer and the Department Program Official a description of the proposed engagement, (2) proposes a plan to mitigate any actual, potential, or apparent Conflict of Interest, and (3) obtains written authorization

from the Department Agreements Officer. Failure to comply with this provision may result in termination of the CHIPS Engagement or removal from the Panel.

- (24) The Firm affirms that if it becomes aware of a previously undisclosed actual, potential, or apparent Conflict of Interest; engagement with an Applicant; or participation in CHIPS-Related Activities, the Firm will immediately notify the Department Agreements Officer and the Department Program Official. Penalties for failure to properly disclose an actual or apparent Conflict of Interest before or during performance of the CHIPS Engagement may include termination of the CHIPS Engagement or removal from the Panel.
 - (25) The obligations imposed by this Part (C) shall survive the expiration or termination of the CHIPS Engagement. The Firm shall include this Part (C) in any subcontractor and consultant agreements it may enter into in connection with the CHIPS Engagement and shall be liable for any breach thereof by any subcontract or consultant party to such agreements.
- (D) Expenses, Billing, Collections and Travel. In connection with the CHIPS Engagement, the Firm agrees:
- (1) The Firm assumes the credit risk and dispute risk of the Applicant. The Department has no obligation to pay any of the Firm's fees and expenses; however, the Department will support the Firm in obtaining payment of its reasonable fees and expenses, which, in cases that the Department deems appropriate, may include requiring such payment as a closing condition.
 - (2) During the course of the CHIPS Engagement, the Firm shall promptly respond to inquiries from the CPO or the **[Applicant]** **[Sponsor]** regarding past and expected fees and expenses. The Department expects the Firm's staff to use good judgment and to incur only reasonable fees and expenses necessary to achieve the Department's objectives in connection with a CHIPS Engagement. Transportation, lodging, meal and incidental expenses will be considered reasonable only to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation (available here: <https://www.ecfr.gov/current/title-41/subtitle-F>).
 - (3) The Firm shall notify CPO of any amounts invoiced to the Applicant in any CHIPS Engagement that remain unpaid for more than three (3) months.
 - (4) If the Firm requests payment of expenses for air travel in connection with a CHIPS Engagement, such air travel shall be on a U.S. flag certified air carrier in compliance with 49 U.S.C. § 40118 (the "Act"), unless (1) a bilateral or multilateral agreement with the United States provides

otherwise, (2) air travel on a U.S. flag certified air carrier between locations outside of the United States is not reasonably available, or (3) air travel on a U.S. flag certified air carrier between the United States and a location outside of the United States is not available.

- (E) Firm Team Changes. The Firm shall promptly notify CPO of the departure from the Firm of any employee who is a Firm Team Member, the withdrawal of any Firm Team Member from a CHIPS Engagement, and the addition of any new Firm Team Members (subject to the approval of CPO).
- (F) Publications & Speeches.
 - (1) In the event that any employee of the Firm publishes any article, makes any speech or appears on a panel discussion relating to any CHIPS Engagement, the Firm shall ensure such person does not disclose any confidential information. The Firm shall require such person to make clear that he or she is writing or speaking in his or her own behalf, and not on behalf of the Department, the CHIPS Incentives Program or CPO. The Firm should deliver promptly to CPO copies of all speeches and articles referred to above after they have been given or published.
 - (2) In its promotional materials describing various client engagements, the Firm may disclose publicly available information about a particular CHIPS Engagement, provided that the Firm has performed *substantial* work in connection with such engagement.
- (G) Rules of Professional Responsibility. These Guidelines are intended to supplement any professional or ethical obligations applicable to the Firm's professional staff. Notwithstanding the payment obligations of the **[Applicant]** **[Sponsor]** described above, for the purposes of applicable professional or ethics codes, the Department, and not the Applicant **[or the Sponsor]**, shall be deemed to be the Firm's client in a CHIPS Engagement.
 - (1) Equal Employment. The Firm shall comply with Section 202 of Executive Order (EO) 11246, as amended, pertaining to equal employment, as well as the EO's implementing regulation at 41 C.F.R. § 60-1.4.
- (H) Files. All electronic and physical files relating to a CHIPS Transaction prepared by the Firm ("**CHIPS Files**") belong to the Department. The Firm may not reproduce, transfer or destroy CHIPS Files without the prior written approval of the CPO on behalf of the Department. The Firm shall transfer all CHIPS Files to the Department at actual cost upon CPO's written request. The Firm shall not have any lien over any CHIPS Files.
- (I) Debarment. The Firm represents that it has not been debarred, suspended, or otherwise excluded from receiving an award by the Federal Government or otherwise prohibited by Presidential Executive Order or law from receiving an award from the Federal Government. The Firm shall comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension) and require participants in lower-tier transactions to comply

with 2 C.F.R. Part 180, Subpart C (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension).

- (J) Sanctions. Failure to comply with these Guidelines may result in the Department terminating any then-existing CHIPS Engagements with the Firm and/or disqualifying the Firm for future transactions.
- (K) Information Security Controls. Before the Firm may commence any work on the Transaction, (1) the Firm shall have implemented security controls that meet or exceed the standards set forth in 48 C.F.R. 52.204-21 (available here: [52.204-21 Basic Safeguarding of Covered Contractor Information Systems. | Acquisition.GOV](#)) or (2) if the Firm's security controls do not meet such standards in any respect, the Firm and DOC shall have agreed to a plan of action and milestones (POA&M) to correct any such deficiency. For more detail on protecting the confidentiality of Controlled Unclassified Information (CUI) that resides in nonfederal systems and organizations, please see SP 800-171 Rev. 2 (available here: [NIST SP 800-171 Rev. 2 | Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations](#)).
- (L) Telecommunications Equipment or Services. In the provision of services to the Department in connection with the CHIPS Engagement, the Firm will not use telecommunications equipment or services produced or provided by Huawei Technologies Company or ZTE Corporation or any subsidiary or affiliate of such entities.
- (M) TikTok. The Firm warrants that the software application TikTok, or any successor application or service of TikTok developed or provided by ByteDance Limited or an entity owned by ByteDance Limited, (A) is not installed on the devices by which the Firm is providing the Department services in connection with the CHIPS Engagement; and/or (B) has no ability to access information related to the services the Firm is providing in connection with the CHIPS Engagement.
- (N) Notices. All notices to the Department hereunder shall be sent by email, courier or overnight mail to [____] (as the Department's Agreements Officer) and [____] (as the Department's Program Official) at the following address:

CHIPS Program Office
United States Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

APPENDIX I
NAMES OF FIRM TEAM MEMBERS, INCLUDING TEAM LEADER

<u>Category</u>	<u>Name</u>
Team Leader/Partner	
Partner	
Counsel	
Associate	
Paralegal	

APPENDIX II
FORM OF INDIVIDUAL NON-DISCLOSURE AND CONFLICTS AGREEMENT

This Individual Non-Disclosure and Conflicts Agreement, dated as of [DATE] (this "**Agreement**"), is entered into by the undersigned and is being delivered to the U.S. Department of Commerce (the "**Department**") in connection with the Retainer Letter, dated as of [DATE] (the "**Retainer Letter**"), entered into by [FIRM NAME] (the "**Firm**") and delivered to the Department.

1. Definitions:

For purposes of this Agreement, the terms identified herein have the following definitions:

"Applicant" means (i) any person or entity that the Firm knows, based on reasonable due diligence, is preparing or has submitted a statement of interest, pre-application, or application for financial assistance under Section 9902 of the CHIPS Act and (ii) any person or entity that is materially participating in an application or the preparation of a statement of interest, pre-application or application for financial assistance under the CHIPS Act, including, without limitation (1) any state or local government developing, offering, or providing incentives in connection with such an application; (2) any institution of higher education or training entity developing, offering, or providing workforce development, educational or research and development activities in connection with such an application; (3) any person or entity developing, offering, or providing financing in connection with such an application; and (4) any person or entity participating in an application by providing materials, equipment, other supplies, or purchase commitments in connection with such an application.

"CHIPS Act" means the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by the CHIPS Act of 2022.

"CHIPS-Related Activities" means (i) any activity related to the implementation of Section 9902 of the CHIPS Act, or any other potential or existing domestic or foreign semiconductor incentive programs related to semiconductor manufacturing facilities, (ii) any material participation in an application for financial assistance under the CHIPS Act and (iii) any services to an Applicant (as defined below) in connection with the preparation of an application for financial assistance under the CHIPS Act.

"Conflict of Interest" means any past (going back to January 2021), current, or future activity or relationship that could render the Firm, any Firm Team member, or any subcontractor or consultant unable or potentially unable to render impartial assistance or advice to the Department free of the appearance or existence of bias or impaired objectivity, including (i) any conflict of interest pursuant to any applicable professional or ethical obligations and (ii) any other legally binding conflict restraints.

"Department Agreements Officer" means the employee of the Department defined as the "Department Agreements Officer" in the Retainer Letter.

"Department Program Official" means the employee of the Department defined as the "Department Program Officer" in the Retainer Letter.

“Firm Team Member” means the individual Firm employees who will constitute the team handling the engagement of the Firm by the Department in connection with the specific transaction referenced in the Retainer Letter.

2. General Provisions:

- a) The Department has retained the Firm to provide legal services in connection with the specific transaction referenced in the Retainer Letter. I, an employee of the Firm, a subcontractor, consultant or other entity retained by the Firm to perform work under the Retainer Letter, intending to be legally bound, hereby consent to the terms of this Agreement in consideration for being granted conditional access to certain information during the performance of the Retainer Letter. I understand and agree that the obligations imposed by this Agreement shall survive the expiration or termination of the Retainer Letter.
- b) I hereby acknowledge that I have received, reviewed, and understand Part (C) of Attachment B to the Retainer Letter (Non-Disclosure and Conflict of Interest Obligations).

3. Non-Disclosure:

- a) The information provided to me during the performance of the Retainer Letter is made available to me solely for the purpose of providing services to the Department under the Retainer Letter. That information may include trade secrets, proprietary information, other legally protected information, and internal Department materials, communications, and deliberations that are subject to confidentiality protections by law or are otherwise not appropriate for public disclosure.
- b) The following types of information are not subject to this clause. Information that at the time of disclosure by me:
 - i) is generally known by or available to the general public;
 - ii) is legally known to the Firm or me at the time of disclosure from a source other than the Department, unless the Firm or I know or have reason to believe that the source obtained or furnished the information without legal authority;
 - iii) has been furnished by the Department to the public; or
 - iv) has been furnished to the Firm or me by a third party who legally obtained said information and the right to disclose it, unless the Firm knows or has reason to believe that the source obtained or furnished the information without legal authority.
- c) I will not disclose information received during the performance of the Retainer Letter or prepared by the Firm or me during the performance of the Retainer Letter based on information received from the Department to any third party without the prior written consent of an authorized Department representative.
- d) I understand that unauthorized disclosure of such information may result in termination of the Retainer Letter and subject the Firm and/or me to civil and/or criminal penalties.
- e) I shall not use the information received during the performance of the Retainer Letter or

prepared by the Firm or me during the performance of the Retainer Letter based on information received from the Department for any private commercial purpose, or any purpose other than to perform the services identified in the Retainer Letter.

- f) I will not leverage this government work to solicit private sector business. I shall not, without the prior written approval from an authorized Department representative, refer to the Retainer Letter, the Firm's work, or my work thereunder, in any business development activities, advertising, publicity, or promotional materials.
- g) I shall not use any Department logos or insignia without appropriate written consent from an authorized Department representative.
- h) I agree to follow any written instructions provided by the Department, its employees, and authorized representatives for the proper handling of any information received during the performance of the Retainer Letter.
- i) The Firm shall establish and/or maintain operating procedures, screening measures, and/or physical security measures to appropriately protect the information received during the performance of the Retainer Letter from any inadvertent release or disclosure to any unauthorized third parties. I agree to abide by the procedures and measures established by the Firm and, in addition, shall segregate all information I receive from the Department to prevent commingling or disclosure to non-Firm Team Members.
- j) Internal dissemination by me of information received from the Department during the performance of the Retainer Letter shall be limited to those persons who have been informed of the confidential nature of the information and need such information to perform the work under the Retainer Letter.
- k) I agree that I shall return to the Department all information received from or prepared by the Firm or me during the performance of the Retainer Letter upon (a) demand by an authorized Department representative or (b) the completion or termination of the Retainer Letter, whichever occurs first.
- l) In the event the I receive any legal notice from any third party that attempts to require the Firm or me to release any information subject to this Agreement, I shall within three (3) business days provide written notice to the Department Agreements Officer and the Department Program Official, along with notice to any relevant third party of the notice received by the Firm.
- m) In the event I am involved in any litigation related to any information subject to this Agreement, I shall within five (5) business days provide written notice to the Department Agreements Officer and the Department Program Official, along with any relevant third party, of such litigation.
- n) I shall immediately provide written notification to the Department Agreements Officer and the Department Program Official upon discovery of any unauthorized use or disclosure of any information or any other breach of this Agreement. I agree to cooperate with the Department to assist the Department with regaining possession of any information, and to also prevent further unauthorized use or disclosure.

4. Conflict of Interest:

- a) I have disclosed to the Department any lobbying registrations under the Lobbying Disclosure Act or registrations under the Foreign Agents Registration Act related to the development or implementation of any potential or existing domestic or foreign semiconductor incentive program related to semiconductor manufacturing facilities.
- b) I hereby affirm that I am and will remain for the duration of the Retainer Letter in full compliance with Firm's Organizational Conflict of Interest Plan and any additional policies and procedures for defining, identifying, and avoiding Conflicts of Interest.
- c) For purposes of this agreement, I understand that an actual, potential, or apparent Conflict of Interest may arise from my performing CHIPS-Related Activities for another client, my performing non-CHIPS-Related Activities for an Applicant, employment, stock ownership, a creditor or debtor relationship, prospective employment, or any activities or relationships that could render me unable or potentially unable to render impartial assistance or advice to the Department free of the appearance or existence of bias.
- d) I hereby affirm that, to the best of my knowledge and upon due diligence and inquiry, I do not have any actual, potential, or apparent Conflict of Interest with respect to any service provided under the Retainer Letter.
- e) I agree that, to avoid potential, actual, or apparent program Conflicts of Interest, for the duration of the Retainer Letter and one year thereafter, I shall not (a) perform CHIPS-Related Activities for another client or (b) otherwise provide services to an Applicant unless the Firm: (1) fully discloses and submits to the Department a description of the proposed engagement, (2) proposes a plan to mitigate any actual, potential, or apparent Conflict of Interest, and (3) obtains written authorization from the Department. Failure to comply with this clause may result in termination of the Retainer Letter.
- f) I further affirm that if I become aware of a previously undisclosed actual, potential, or apparent Conflict of Interest; engagement with an Applicant; or participation in CHIPS-Related Activities, I will immediately notify the Firm.

5. Additional Terms:

- a) I represent and affirm that I have the authority to enter into this Agreement.
- b) 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 or the Office of Special Counsel 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.
- c) My execution of this Agreement does not nullify or affect in any manner any other similar

agreement which I have executed, or may execute with the United States Federal Government or any of its departments or agencies.

- d) I acknowledge that monetary damages may not be a sufficient remedy for damages resulting from my violation of this Agreement, and that the Department shall be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- e) This Agreement constitutes the entire agreement with respect to the subject matter hereof. It shall not be modified except by a written agreement signed by both parties.
- f) None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the Department, but only by an instrument in writing signed by an authorized official of the Department. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either party to enforce any provision of this Agreement shall not constitute waiver of such provision or any other provisions of this Agreement.
- g) This Agreement shall be construed and governed by the laws of the United States.
- h) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. Should any obligations of this Agreement be found illegal or unenforceable as being too broad with respect to the duration, scope or subject matter thereof, such obligations shall be deemed and construed to be reduced to the maximum duration, scope or subject matter allowable by law.

I affirm that I have carefully read and understand the statements above. To the extent I believe my ability to disclose any of this information is limited by existing obligations, I understand I am expected to provide as much detail as possible to enable the agency to conduct a thorough assessment of my past and ongoing activities. I make this Agreement in good faith, without mental reservation or purpose of evasion.

Name: _____

Firm: _____

Title: _____

Email: _____

Signature: _____

Date: _____

APPENDIX III

UPDATED CONFLICTS OF INTEREST SUBMISSION