

MASSACHUSETTS TECHNOLOGY COLLABORATIVE

Grant Agreement

Between Massachusetts Technology Collaborative and *ICMPartnerName*

This Grant Agreement and any Attachments hereunder (collectively the "Agreement") is made and entered into by and between Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative ("MassTech"), an independent public instrumentality of the Commonwealth of Massachusetts with a principal office and place of business at 75 North Drive, Westborough, Massachusetts, 01581, and *ICMPartnerName*, with a principal place of business at *ICMPartnerPrimaryAddressLine1*, *ICMPartnerPrimaryAddressLine2*, *ICMPartnerPrimaryAddressCity*, *ICMPartnerPrimaryAddressState*, *ICMPartnerPrimaryAddressZipCode* ("Participant").

Whereas, MassTech and Participant desire to enter into a contract under which Participant may perform certain work in accordance with the terms and conditions of this Agreement, and

Whereas, such work shall be specified in Statements of Work ("SOW" or "SOWs") set forth as Attachments hereto, and

Whereas, those SOWs may contain additional terms and conditions related to the work to be performed by the Participant.

Now, therefore, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Term and Termination**

- a) This Agreement shall take effect as of *ICMContractEffectiveDate* (the "Effective Date") and shall remain in effect until *ICMContractPeriodofPerformanceEndDate* (the "Term").
- b) This Agreement may be terminated by either MassTech or Participant at any time for a material breach of any term. The breaching party shall have thirty (30) days to cure such breach from the date of written notice, unless otherwise agreed to by the parties in writing.
- c) This Agreement may be terminated by MassTech for convenience upon thirty (30) days written notice to Participant. In the event of termination not the fault of Participant, Participant shall be reimbursed as specified in Attachment 1 for all costs and non-cancellable commitments incurred in connection with the Agreement, up to the date of termination notice.
- d) MassTech may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of work hereunder or in the event of an unforeseen public emergency or other change of law mandating immediate MassTech action inconsistent with performing its obligations.
- e) Upon termination Participant shall, unless otherwise agreed, cease work hereunder, and deliver to MassTech all written and tangible work product, whether in draft or final form at the time of termination, identified as deliverables in the SOW for which payment has been made, and all other property of MassTech, and all copies thereof in the direct or indirect possession or control of Participant, up to and including the date of termination.
- f) Sections 4 through 18 of this Agreement shall survive termination.

2. **Notices**

- a) All communications to MassTech regarding legal issues shall be emailed to MassTech General Counsel Jennifer M. Saubermann at saubermann@masstech.org followed by hardcopy to the following address:
Massachusetts Technology Collaborative

75 North Drive
Westborough, MA 01581
508/870-0312 (phone)
508/898-2275 (fax)

Attn: General Counsel

- b) All communications regarding any other issues shall be emailed or delivered to the personnel specified in Section 2 of Attachment 1 (the SOW), **Project Personnel**.

Any notice hereunder shall be in writing and shall be effective (i) if dispatched by email and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after dispatch, (iii) if sent by first class mail, five business days after its date of posting.

3. **Timely Performance**

Participant acknowledges that expeditious completion of work and delivery of related deliverables set forth under this Agreement and the attached SOW are of the utmost importance to MassTech.

4. **Participant's Representations, Warranties and Certifications**

As of the Effective Date, Participant hereby represents, warrants and certifies as follows:

- a) Participant is duly authorized to enter into this Agreement, and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Participant or any of its assets is bound.
- b) Participant and all Project Personnel of Participant are fully capable and qualified to perform the described work and Participant's other obligations hereunder, and have obtained all requisite licenses and permits to perform such obligations.
- c) Participant and its Project Personnel are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other local, state or federal governmental authorities applicable to or implicated by the subject matter hereunder.
- d) Participant and its employees are not employees, partners or joint-venturers of MassTech. Participant will be solely responsible for withholding and paying all applicable payroll taxes of any nature including social security and other social welfare taxes or contributions that may be due on amounts paid to its employees. Participant has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System, and with all laws of the Commonwealth relating to Worker's Compensation, Mass. Gen. Laws ch. 152.
- e) Participant shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Participant agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and Mass. Gen. Laws ch. 151B.
- f) Participant represents and warrants that all personnel performing work hereunder are eligible to work in the United States at the time of execution of this Agreement and that Participant has a continuing obligation to ensure such status during the term of the Agreement.
- g) Additional representations, warranties and certifications may be set forth in the SOW.

5. **Insurance**

Participant shall obtain and maintain in effect through the term of this Agreement appropriate insurance coverage for its activities hereunder including, but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance. At MassTech's request, Participant will provide MassTech with copies of the certificates of insurance evidencing such coverage. Additional insurance requirements may be specified under the SOW.

6. **Indemnification and Liability**

a) Participant shall indemnify, defend and hold harmless the MassTech and its successors and assigns, and all of its officers directors, lenders, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees from and against any and all claims, suits, actions, judgments, demands, losses, costs, attorney's fees, expenses, damages and liability to the extent caused by, resulting from, or arising out of the intentional acts, negligent acts, errors, omissions, or allegations thereof, of Participant, its employees, agents or representatives in the performance of work under the Agreement.

b) MassTech's liability under this Agreement shall be limited to the payments hereunder. In no event shall MassTech be liable for any additional amounts, including without limitation, any indirect, special or consequential damages.

7. **Assignment and Subcontracting**

Participant shall not assign or in any way transfer any interest in this Agreement without the prior written consent of MassTech, including subcontracting any services except as otherwise included in the SOW attached hereto.

8. **Conflicts of Interest**

Participant acknowledges that all MassTech employees are subject to the Massachusetts Conflict of Interest statute, located at Mass. Gen. Laws ch. 268A.

9. **Record Keeping, Audit, and Inspection of Records**

Participant shall maintain books, records and other compilations of data pertaining to its activities under this Agreement to the extent and in such detail as shall properly substantiate claims for payment and Participant's performance of its duties under the Agreement. All such records shall be kept for a period of not less than seven (7) years or for such longer period as may be required by law (the "Retention Period"). The Retention Period starts on the first day after final payment under this Agreement is made. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MassTech, the Commonwealth and their respective duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of Participant which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not permitted under this Agreement, then Participant shall refund to MassTech the amount determined by such audit within thirty (30) days of Participant's receipt of such audit and demand.

10. **Publicity**

Participant shall coordinate with MassTech on any press releases, events, signs and to plan for any news conference concerning work hereunder. In any media produced by Participant, Participant will not represent that positions taken or advanced by it represent the opinion or position of MassTech.

11. **Public Records**

As a public entity, MassTech is subject to the Massachusetts Public Records Law (set forth at Mass. Gen. Laws ch. 66) and thus all documents and other materials made or received by MassTech and/or its employees are subject to public disclosure. Participant should not submit any information to MassTech that it does not want publically disclosed, and should assume that all submissions are subject to public disclosure without any prior notice, even if marked confidential. If Participant wishes to have MassTech treat certain information or documentation as confidential, Participant must submit a written request to MassTech's General Counsel specifying the type of information that the Participant wishes to be treated as confidential along with a detailed explanation of the statutory exemption(s) from the Public Records Law. MassTech's General Counsel is the sole authority within MassTech for making determinations on the applicability and/or assertion of an exemption to the Public Records Law.

12. **Choice of Law**

This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles. The Participant agrees to bring any Federal or State legal proceedings arising hereunder in which the Commonwealth or MassTech is a party in a court of competent jurisdiction within the Commonwealth of Massachusetts. This Section shall not be construed to limit any other legal rights of the parties.

13. **Force Majeure**

Neither party shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance including the Term may be extended to account for delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

14. **Amendments and Waivers**

The terms of this Agreement and any attachments thereto can be amended only through a written document executed by both Parties. Conditions, covenants, duties and obligations contained herein may be waived only by written agreement between the parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

15. **Severability**

Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.

16. **Headings**

The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

17. **Counterparts**

This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

18. **Entire Agreement, Amendments and Attachments**

The parties understand and agree that this Agreement and its attachments supersedes all other verbal and written agreements and negotiations by the parties regarding the matters set forth herein, and can only be amended by written agreement of the parties. The following, including without limitation any schedules, milestones, deliverables, budgets, and other terms relative to

the nature of the work to be performed, are attached and incorporated into this Agreement:

- i. Attachment 1 – Statement of Work

**The Massachusetts Technology Park Corporation
d/b/a Massachusetts Technology Collaborative**

ICMPartnerName

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT

Attachment 1

Statement of Work

Pursuant to the terms and conditions of the Agreement and this SOW, MassTech and Participant agree as follows:

1. Performance of Work, Deliverables and Schedule

- a) Participant shall perform the work in accordance with the Project Plan in Attachment A ("Project Plan, Deliverables and Schedule"), the Project Budget in Attachment B ("Budget"), and the Budget Template in Attachment C ("Budget & Invoice Template"). Participant is solely responsible for all project decisions, the preparation of all plans and specifications, and for developing the project in accordance with the Project Plan.
- b) *Deliverables.* Participant shall provide the MassTech Project Manager with the deliverables set forth in the Project Plan (the "Deliverables").
- c) *Schedule.* The parties acknowledge that the dates listed in the schedule in the Project Plan are estimates and subject to change. Any changes to the schedule must be approved by the MassTech Project Manager in writing in advance (electronic mail acceptable), and shall be accepted without need for a formal amendment to this SOW provided that such changes shall not exceed the Term as set forth in Section 1, Term and Termination, of this Agreement.

2. Project Personnel

Both MassTech and Participant have designated the following persons to serve as Project Manager to support effective communication between MassTech and the Participant and to report on the work's progress. Each party will endeavor to maintain the continuity of its respective project personnel.

For MassTech: ICMProjectManager (Project Manager Email) (508-870-0312 ext. ext no)

For Participant: ICMPrimaryContactPersonFirstName ICMPrimaryContactPersonLastName (ICMPartnerContactEmail) (ICMPartnerContactPhone)

Participant Contact for Invoicing Matters: Name, Email and Phone

Written notice shall be provided to personnel at the email addresses set forth in this Section 2 in the event of any change in Project Personnel.

3. The Grant

As full compensation for MassTech's share of the costs for the performance of all work and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, MassTech shall pay to the Participant a maximum amount of [WRITE OUT AMOUNT] Dollars (\$ ICMContractAmount) for the cost elements identified in the Project Budget to be funded with MassTech funds, subject to the provisions and restrictions contained herein. In executing this SOW, Participant acknowledges and agrees that its receipt of the Grant does not create any rights of preference for Participant to receive subsequent funding from MassTech, and the release of Grant funding by MassTech is subject to MassTech's receipt of capital funding for this project from the Commonwealth of Massachusetts in sufficient amounts to reimburse Participant for eligible expenses.

4. Other Requirements <Adjust as applicable>

- a) *Program Evaluation.* Participant agrees to support MassTech's program evaluation activities, and MassTech's goal to disseminate information regarding Participant's experiences. To this end, the Participant agrees that its key personnel and contractors working on the project will be available at reasonable times with advance notice to be interviewed by MassTech or its authorized representatives for purposes of program evaluation or case study development.
- b) *Cost Reimbursement.* The Participant shall be compensated on a cost-reimbursement basis for actual direct costs incurred in the performance of the Project Plan.

- c) *Required Match.* As a condition of the Grant, Participant is required to provide matching funds for the costs incurred in the performance of the project (the “Required Match”).
- i. *Match Ratio:* Participant must match MassTech funds at a ___ : ___ ratio, expended ratably with the reimbursable costs. Participant’s total match contribution shall be a minimum of [WRITE OUT AMOUNT] Dollars (\$X).
 - ii. *Acceptable Forms and Source of Match:* The required match may be either an actual expenditure or an in-kind contribution. In-kind contributions are typically in the form of labor, services, software licenses, and equipment. Actual expenditures shall be recognized in conformance with the Generally Accepted Accounting Principles. Match funds may be from the Participant or third parties, to the extent the funds are not sourced by, or considered discretionary funds under the control of, a state agency, as defined in Mass. Gen. Laws ch. 6, § 39.
 - iii. *Carry Forward:* Unmatched expenses shall remain unpaid and will be carried forward to future periods for payment, once match is met. Any unmatched expenses shall be subject to the Match Ratio in effect at the time the expenses were incurred. To the extent there is match met, over and above the required ratio, those amounts may be carried forward to match future expenses.
 - iv. *Match Documentation:* Participant shall document the Required Match on each invoice submitted to MassTech as set forth in Section 5, Payments and Invoices, below, which must be accompanied by the Invoice Certification Form in Attachment D. Payment is specifically contingent on MassTech’s approval of the form and amount of the Required Match.
- d) *Governing board.* Participant agrees that it will convene a governing board to provide guidance and expertise regarding certain activities related to the project. MassTech shall have a designated seat on the governing board. The additional composition of the governing board, and the scope of its responsibilities are described in more detail in Attachment A.

5. Payments

The Participant shall follow Generally Accepted Accounting Principles (“GAAP”) as well as any applicable accounting standards related to the Participant’s receipt of other federal or state funds.

- a) *Allowable Charges.*
- i. Capitalized Costs. All reimbursed costs must be considered actual capital costs and be capitalized as such on Participant’s books. The costs incurred must be in the performance of the Project Plan and specified on a line item of the Project Budget, as follows:
 1. Capitalized Equipment, Land and Buildings: capital assets purchased in accordance with the Project Budget.
 2. Capitalized Labor: services performed by Participant’s employees that are deemed to be capitalizable under the terms of this SOW, at the actual Annual Base Salary and Percent Effort for each employee or the percent effort set forth in the Project Budget for the position, whichever is less.
 3. Capital Fringe: Benefits related to direct labor costs, can either be incurred as a direct expense or an allocated cost with an approved rate, but must be deemed capitalizable. Documentation of Participant approved rates should be submitted at the time of proposal.
 4. Capitalized Subcontractors/Consultants: capital services provided by Participant’s subcontractors/consultants at the actual cost paid for project services which shall not exceed the amount set forth in the Project Budget.
 5. Capitalized Materials: the cost of capitalized materials purchased which shall not exceed the amounts set forth in the Project Budget;
 6. Other Capitalized Costs: the cost of capital items purchased or capital costs incurred which shall not exceed the amounts set forth in the Project Budget; and

- ii. Capitalized Indirect Costs. The Participant shall be reimbursed for such capitalized indirect costs (e.g., General and Administrative Overhead) at their government-approved rate. Participant shall include evidence of their approved indirect cost rate with its first invoice, if not previously provided. If the Participant's indirect cost rate changes in any future years, Participant will provide evidence of the approval of such change with the next applicable invoice.
- b) *Budget Adjustments*. The foregoing notwithstanding, the parties acknowledge that the costs listed in the Project Budget are estimated. Therefore, Participant may shift funds between the line items associated with each category provided that the totals for each category as set forth in the Project Budget are not exceeded. Any variance between budget categories or other budget modifications will be reviewed in accordance with MassTech's Budget Guidelines in effect at the time. Any budget adjustments impacting the funding to be paid by MassTech must always be for eligible capital expenses incurred by the Participant.
- c) *Payment Terms*. MassTech shall pay the Participant within thirty (30) days after receipt of invoice and determination by MassTech that all proper documentation has been provided, unless MassTech should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of this SOW. Payment is contingent upon performance of the work, and submission of deliverables as specified in Attachment A.
- d) *Invoices/Payment Schedule*
 - i. Invoices shall be addressed to MassTech personnel identified in Section 2, Project Personnel, of this SOW.
 - ii. Invoices shall be submitted using the Invoice Template included with the contract and must include an explanation for any variances to the contract budget on the supporting schedule.

The invoice must include the signed Invoice Certification form, Attachment C, signed by an authorized representative of the participant.

- iii. Participant may submit invoices for payment quarterly ~~<(OR monthly OR~~ upon completion of each milestone and submission of each milestone briefing). Invoices shall provide reasonable documentation including system-generated detailed activity reports showing income and expenses to provide evidence of costs incurred for both the costs for which reimbursement is being requested and the required match. Additional supporting documentation to support costs may be requested by MassTech from time to time and may include:
 1. *Equipment, Land, Buildings*: copies of invoices for the purchase of construction of capital assets;
 2. *Capital Labor*: for each employee, the name, title, and number of hours worked or, if supported by an appropriate allocation methodology, the percentage of effort expended;
 3. *Capital Subcontractors/Consultants*: copies of invoices for such subcontractors/consultants which have been reviewed and approved by Participant prior to submission to MassTech;
 4. *Other Capital Costs*: all costs shall be itemized on the invoice and supported by documentation such as vendor invoices, receipts or other documentation as required by MassTech.
 5. *Other Non-Capital Match Costs*: all costs shall be itemized on the invoice and supported by documentation such as vendor invoices, receipts or other documentation as required by MassTech.
 6. *Matching Funds*: all matching funds expensed during the invoice period must be supported and documented in a format similar to that listed above and as deemed acceptable to MassTech. For third party cash contributions not yet expended, grantee must provide a contribution letter and documentation of receipt of funds. The contribution letter must indicate the intended purpose of the funds. Documentation of the income may

be achieved with either a copy of the check or a system-generated report showing the income of cash received. Expenditure of the cash contribution, will be required as part of subsequent invoice documentation up to the cash amounts approved.

To the extent Participant has an accounting-system that can track and generate reports, for this project alone, which would tie back to invoice amounts and budget categories, MassTech may review this in lieu of documentation as listed in this section, subject to MassTech approval of form and format.

7. **Ownership and Licensing**

MassTech shall own all right, title and interest in the Deliverables provided under this SOW. Participant shall retain ownership in all Participant Property, defined as pre-existing material, including, but not limited to, any products, software, materials and methodologies proprietary to Participant or provided by Participant and any trade secrets, know-how, methodologies and processes related to Participant's products or services. Participant shall make best efforts to not include Participant Property within Deliverables, but should this not be possible then Participant agrees to license or otherwise make available to MassTech in perpetuity, without charge, such included Participant Property for MassTech's non-commercial use and dissemination in whole or in part, for activities including but not limited to production of summaries, case studies or similar information resources. Participant understands all Participant Property provided under this Agreement is subject to disclosure as set forth above in Section 11, Public Records.

8. **Lobbying**

No Grant funds may be used to pay for or otherwise support any activities intended to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agents" or "executive agents" set forth in the Massachusetts Lobbying Law, M.G.L. c.3, §39.

9. **Amendments and Attachments**

All conditions, covenants, duties and obligations contained in this SOW *and* its attachments may be amended only through a written amendment signed by Participant and MassTech. The following are attached and incorporated into this SOW:

- i. Attachment A - Project Plan, Deliverables and Schedule
- ii. Attachment B - Budget
- iii. Attachment C - Budget & Invoice Template
- iv. Attachment D- Invoice Certification Form

Attachment A

Project Plan, Deliverables and Schedule

DRAFT

Attachment B

Budget

DRAFT

Attachment C

Budget & Invoice Template

SEE EXCEL SPREADSHEET

DRAFT

Attachment D

Invoice Certification Form

Invoice Number:

Research and Development Grant Statement of Work Number:

I hereby attest that the expenses reported and the attached associated supporting documentation for which we are seeking reimbursement:

- Have been recognized on Participant's books and recorded as a capital expenditure;
- Are allowable under and consistent with the terms and conditions of the Agreement and approved project budget;
- Are reasonable and appropriately allocated to the project; and
- Are not reimbursed by any other funding source

I further attest that amounts submitted as match, and documented in the attached supporting materials are:

- Allowable under, and consistent with the terms and conditions of the Agreement and approved project budget;
- Accurately recorded and valued and have been expended (or, in the case of equipment or materials contributed by third parties, received) by Participant in direct support of the project funded by MassTech; or in the case of unexpended cash, the funds have been received and will be expended in direct support of the project during the grant period and will be documented in a future invoice;
- Not counted as match under any other award; and
- Not sourced by, or considered discretionary funds under the control of, a state agency as defined in Mass. Gen. Laws ch. 6, § 39. To the extent Participant is a state agency, cash received for match expenditures must be in direct support of the project.

To the best of my knowledge, the remaining match amount required to meet the specified required match in the grant agreement is still expected to be received as planned.

Certified by: _____
Organization

Signature of Authorized Signing Authority

Name and Title of Authorized Signing Authority

Date

Contact email and phone number