

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, a corporation of the ICMPartnerPrimaryAddressState, 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 with or without cause upon ten (10) days written notice to Participant.
- 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 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 mailed or delivered to the following address, or sent by facsimile to the following number:

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 facsimile or 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, including, without limitation, the statutes referenced in Sections 4(d), 4(e), 8, 11 and 12.
- 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**

To the fullest extent permitted by law, Participant shall indemnify and hold harmless the Commonwealth, MassTech, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MassTech, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Participant under this Agreement, or (ii) any negligent acts or omissions or reckless or intentional misconduct of Participant or any of Participant's agents, officers, directors, employees or subcontractors. Without limiting the foregoing, Participant shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by Participant or any of its agents, officers, directors, employees or subcontractors. Furthermore, Participant does hereby release, remise, discharge, indemnify and hold harmless MassTech (defined for purposes of this Section to include MassTech and/or any of its parents, subsidiaries or affiliates, predecessors, successors or assigns, and its respective current and/or former partners, directors, shareholders/stockholders, officers, employees, attorneys and/or agents, all both individually and in their official capacities), from any and all actions or causes of action, suits, claims, complaints, liabilities, torts, debts, damages, controversies, judgments, rights and demands, whether existing or contingent, known or unknown, suspected or unsuspected, as of the date of this Agreement.

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**

a) As a public entity, MassTech is subject to the Massachusetts Public Records Law (set forth at Mass. Gen. Laws ch. 66) and thus documents and other materials made or received by MassTech and/or its employees are subject to public disclosure. All information received by MassTech shall be deemed to be subject to public disclosure, except as otherwise provided herein. It is MassTech's expectation that the overwhelming percentage of documents and information it receives does not contain any information that would qualify for an exemption from disclosure under the Massachusetts Public Records Law. Participants should take great care in determining which documents they submit to MassTech and should assume that all documents submitted to MassTech are subject to public disclosure without any prior notice to the Participant.

b) If Participant wishes to have MassTech treat certain information or documentation as confidential, Participant must submit a written request to the MassTech General Counsel that details the type of information and/or documentation that the Participant wishes to be treated as confidential along with a detailed explanation supporting the application of the statutory exemption(s) from the Public Records Law cited by Participant. Participant should not submit any information to MassTech that it does not want publically disclosed, but should provide enough detail about the information it requests to be treated as confidential so that the General Counsel can make a determination about the applicability of the asserted statutory exemption(s) from the Public Records Law cited by the Participant.

c) The MassTech General Counsel will issue a written determination within a reasonable period of time concerning the applicability of an exemption from disclosure under the Public Records Law. If the General Counsel determines that an exemption is applicable, the written determination will specify the method of submission of the confidential information. The MassTech 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. No employee of MassTech other than the MassTech General Counsel has any authority to address issues concerning the status of "Sensitive Information" or to bind MassTech in any manner concerning MassTech's treatment and disclosure of such documents.

d) By signing this Agreement, Participant acknowledges, understands and agrees that the procedures set forth herein are applicable to any documents submitted by Participant to MassTech and that Participant shall be bound by these procedures and the determination of the MassTech General Counsel.

12. **Treatment of Sensitive Information provided by MassTech**

a) Participants, as well as other third parties interacting with MassTech (collectively, the "Holding Party") may receive, have access to or create confidential, proprietary or otherwise sensitive information regarding MassTech, its activities, its employees and/or third parties, such as applicants, consultants, grantees, recipients or respondents under MassTech programs, which information is not generally known by or disseminated to the public as a matter of course. Such information is sometimes referred to as "Sensitive Information." MassTech expects all Holding Parties to maintain the highest degree of professionalism, integrity and propriety with respect to Sensitive Information at all times. In addition, the Massachusetts Conflict of Interest Statute, M.G.L. Chapter 268A, prohibits current and former state employees (defined in the statute to include regular full-time and part-time employees, elected or appointed officials and independent Participants) from improperly disclosing certain categories of Sensitive Information or using it to further their personal interests, and the MA Fair Information Practices Act, Mass. Gen. Laws Chapter 66A, contains numerous legal requirements aimed at protecting "personal data" from improper disclosure.

b) MassTech's policy regarding a Holding Party's possession of Sensitive Information has two key elements: 1) Holding Parties should not request or accept any more Sensitive Information -- whether of a business or personal nature -- than is reasonably necessary under the circumstances; and 2) In the absence of a specific legal requirement compelling disclosure of Sensitive Information in a particular instance, all Holding Parties are expected to take appropriate measures to safeguard such information from improper use and disclosure.

c) Because the relevant legal requirements and the nature and scope of the information in question can create uncertainty, Holding Parties are urged to confer with MassTech's General Counsel if they have any questions about confidentiality, the scope or proper treatment of Sensitive Information, or MassTech's policies with respect to such topics. It should be noted that the obligations under these policies continue even after this Agreement is terminated.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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: ICMInternalSignatoryName Name: ICMPartnerAuthorizedSignatoryName
Title: ICMInternalSignatoryTitle Title: ICMPartnerAuthorizedSignatoryTitle
Date: IntDate1 Date: _____

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Attachment 1

Statement of Work ICMContractNo

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”) and the Project Budget in Attachment B (“Budget & Rates/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 the Master 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.

4. Other Requirements <Adjust as applicable>

- a) *Program Evaluation.* The 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) *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 Mass Tech Collaborative funds at a ___ : ___ ratio,

expended ratably with the reimbursable costs..

- ii. *Acceptable Forms and Source of Match:* The required match may be either a cash expenditure or an in-kind contribution. In-kind contributions are typically in the form of labor, services, software licenses & equipment. Actual expenditures shall be recognized in conformance with the Generally Accepted Accounting Principles. Match source may be from the grantee or from third parties, although certain grant programs may have restrictions on source of matching contributions.
- 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 the year in which 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 Mass Tech Collaborative as set forth in Section 5, Payments and Invoices, below. Payment is specifically contingent on Mass Tech Collaborative's approval of the form and amount of the Required Match.

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. Direct Costs. The Participant shall be reimbursed for direct costs incurred in the performance of the Project Plan and as specified on a line item of the Project Budget, as follows:
 1. Direct Labor: services performed by Participant's employees under the terms of this SOW at the actual labor rate per hour for each employee or the rate set forth in the Project Budget for the employee, whichever is less;
 2. Subcontractors/Consultants: 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;
 3. Direct Materials: the actual cost of direct materials purchased which shall not exceed the amounts set forth in the Project Budget;
 4. Other Direct Costs: the actual cost of other direct materials purchased or costs incurred which shall not exceed the amounts set forth in the Project Budget. (e.g., postage, telephone, publications, graphics, etc.); and
 5. Travel: the reasonable and necessary actual costs incurred for travel, lodging, meals and incidental expenses, as set forth in the Project Budget. Any and all claims for meal expenses shall be supported by detailed, itemized receipts. Mass Tech Collaborative will not reimburse for any alcoholic beverages. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time of travel.
- ii. Indirect Costs. The Participant shall be reimbursed for such indirect costs (e.g., General and Administrative Overhead) at their government-approved rate or at the Participant's actual indirect cost rate calculated in accordance with the Participant's applicable regulation, which shall not exceed the rate set forth in the Project Budget.

- 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.

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 of any variances from the contract budget on the supporting schedule. The invoice template includes a certification statement which must be signed by an authorized representative of the Participant.

(Cost Reimbursement language)

- iii. Participant may submit invoices for payment quarterly **<(OR monthly)>**. Invoices shall provide reasonable documentation to provide evidence of costs incurred for both the costs for which reimbursement is being requested and the required match, which shall include the following:
 1. *Direct 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;
 2. *Subcontractors/Consultants:* copies of invoices for such subcontractors/consultants which have been reviewed and approved by Participant prior to submission to MassTech; and
 3. *Direct Costs/Travel:* all direct costs and travel expenses shall be itemized on the invoice and supported by documentation such as vendor invoices, travel vouchers, expense receipts or other documentation as required by MassTech.

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.

(Milestone or Fixed Price language)

Participant may submit invoices for payment upon completion of the work or milestone in accordance with the schedule set forth in Attachment A. Invoice documentation must be in accordance with the project or milestone requirements set forth in Attachment A.

7. Access and Use

Participant agrees to license or otherwise make available to MassTech in perpetuity, without charge, all materials prepared and produced for the project, including, without limitation, all plans, specifications and analyses developed in connection with the project for MassTech's use and dissemination. Participant agrees that MassTech shall have the right to make use of and disseminate, in whole or in part, all work products, reports, and other information produced in the course of the project, and to use the information therein contained to produce summaries, case studies or similar information resources.

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 ICMContractNo 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 ICMContractNo:

- ii. Attachment A – Project Plan, Deliverables and Schedule
- iii. Attachment B – Budget & Invoice Template

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Attachment A

Project Plan, Deliverables and Schedule

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Attachment B

Budget & Invoice Template

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