

MASSACHUSETTS TECHNOLOGY COLLABORATIVE

Services Agreement Between Massachusetts Technology Collaborative and *ICMPartnerName*

This Services 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:

Name: ICMInternalSignatoryName

Title: ICMInternalSignatoryTitle

Date: _____

By: _____

Name: ICMPartnerAuthorizedSignatoryName

Title: ICMPartnerAuthorizedSignatoryTitle

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

Participant shall perform the agreed upon work in accordance with the specifications set forth below, and the rate(s) set forth in Section 3 (Payments and Invoices) below **OR** Attachment A ("Rate Schedule") [**delete Attachment A if rate is in Section 3, or if fixed fee or milestone based**].

Scope

Schedule

Deliverables

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. Payments and Invoices

[T&M]

a) In consideration of Participant's work and delivery of Deliverables, the acceptance of and payment for as subject to review and approval of MassTech, MassTech shall pay Participant at the rate of [Write Out Amount] Dollars (\$xx.00) per hour OR at the rates set forth in Attachment A (Rates), including reasonable out-of-pocket expenses, up to a maximum amount of [Write Out Amount] ICMContractAmount). Said fee amount shall be the sole and complete compensation for services performed by Contractor under this SOW.

b) Participant shall invoice MassTech no more frequently than monthly nor less frequently than quarterly. Payments hereunder will be made by MassTech within thirty (30) days, following receipt of reasonably detailed invoices from Participant. Participant's invoice shall be in a format consistent with the tasks set forth in Section 1 of this SOW. Invoices shall provide reasonable documentation, including:

- i. Invoice period of performance
- ii. Description of the services provided

- iii. Staff charges: for each employee, the name, title, number of hours worked and hourly rate; and
- iv. Direct charges: all direct costs shall be itemized on the invoice and supported by documentation such as vendor invoices, travel vouchers, expense receipts or other documentation as requested by MassTech. Mileage shall be reimbursed at no more than then applicable rates published by the Internal Revenue Service. Any and all claims for meal expenses shall represent actual, reasonable and necessary expenses and shall be supported by detailed, itemized receipts. MassTech will not be responsible for the payment or reimbursement of any alcoholic beverages.

OR

[FIXED FEE & MILESTONE BASED]

- a) In consideration of Participant's performance of work and delivery of Deliverables hereunder, MassTech shall pay Participant a fixed fee equal to [Write Out Amount] Dollars (\$ ICMContractAmount). Said fixed fee amount shall be the sole and complete compensation for work performed by Participant under this SOW.
- b) Participant will submit invoices for the work performed in accordance with the following milestone completion **OR** date schedule:

Milestone/Date	Amount

Payments hereunder will be made by MassTech thirty (30) days following receipt of reasonably detailed invoices from Participant. Participant's invoice shall be in a format consistent with the tasks set forth in Section 1 of this SOW. Invoices shall provide reasonable documentation to provide evidence of costs incurred.

4. Ownership of Intellectual Property

a) Definitions:

Custom Work Product: The term "Custom Work Product" shall mean all work items newly created by Participant expressly on behalf of MassTech under this SOW. Custom Work Product does not include any Participant Property.

Deliverables: The term "Deliverables" shall mean deliverables as set forth in Section 1 of this SOW. Deliverables may contain Custom Work Product, Participant Property or both.

Participant Property: The term "Participant Property" shall mean all 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, all of which shall remain the sole and exclusive property of Participant.

- b) License Grant: Subject to the terms of this SOW, Participant grants to MassTech a royalty free, non-exclusive, non-transferable, perpetual license to use the Participant Property contained in the Deliverables provided hereunder for purposes of this SOW. Participant also agrees to 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 any project for MassTech's use and dissemination.
- c) Ownership: Custom Work Product provided by Participant pursuant to this SOW shall be done on a "work made for hire" basis under the Copyright Act. To the extent any such Custom Work Product shall not be deemed "work for hire" under any applicable law, Participant hereby assigns, transfers and conveys to MassTech any and all right, title and interest it may have in and to such Custom Work Product.

- d) 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.

5. Additional Insurance Requirements

{To Be Inserted or NONE}

6. 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:

- i. Attachment A – Rate Schedule

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Attachment A

Rate Schedule

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