**MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

**Services Agreement**

**Between Massachusetts Technology Collaborative and ICMPartnerName**

This Services Agreement and any Exhibits or Attachments hereunder (collectively the "Agreement") is made and entered into by and between Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative (“Customer”), an independent public instrumentality of the Commonwealth of Massachusetts with a principal office and place of business at 75 North Drive, Westborough, Massachusetts 01850 and ICMPartnerName located at ICMPartnerPrimaryAddressLine1, ICMPartnerPrimaryAddressLine2, ICMPartnerPrimaryAddressCity, ICMPartnerPrimaryAddressState ICMPartnerPrimaryAddressZipCode (“Service Provider").

**Whereas,** Customer desires to retain Service Provider for the purpose of rendering Services as defined below, and,

**Whereas**, Service Provider has the desire and capacity to render the Services as defined below under the conditions hereto set forth, and

**Whereas**, such Services shall be specified in Statements of Work (“SOW” or “SOWs”) set forth as Exhibits hereto, which will supersede and control over any conflicting terms in this Agreement.

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**
   1. This Agreement shall take effect as of ICMContractEffectiveDate (the "Effective Date") and shall remain in effect until ICMContractPeriodofPerformanceEndDate (the “Term”). This Agreement may be suspended or terminated in whole or in part in any of the following situations by:
      1. Customer for cause when Service Provider fails to comply with the terms and conditions of this Agreement, provided Customer gives Service Provider notice of non-compliance and Service Provider does not remedy such non-compliance within 30 calendar days of such notice.
      2. Customer for convenience; in this event Service Provider shall be reimbursed for all services performed and accepted by Customer through the date of termination.
      3. Mutual agreement of the Customer and the Service Provider.
      4. Customer in the event of loss of availability of sufficient funds for the purposes of Services hereunder, or in the event of an unforeseen public emergency or other change of law mandating immediate Customer action inconsistent with performing its obligations. In the event of loss of funds, the Customer agrees to notify Service Provider as promptly as possible, so the Service Provider can limit continued performance under this Agreement.

Upon termination Service Provider shall, unless otherwise agreed, cease work hereunder and provide to Customer the Deliverables set forth in the SOW.

Sections 5, 6, 8, 10 and 14 of this Agreement shall survive termination.

1. **Fees**

In consideration of Service Provider’s performance of Services in compliance with the Agreement, Customer shall pay Service Provider up to **Dollars ($ICMContractAmount)**,at the rates set forth in **Exhibit 1**. Said amount shall be the sole and complete compensation for work performed by Participant under this Agreement unless amended in writing by mutual agreement of the parties. Costs incurred must be in line with the categories set forth in the Budget set forth in **Exhibit 1**.

1. **Invoices and Payments**
   1. **Invoices**. Service Provider may submit invoices for payment [*edit as applicable*- at least quarterly but not more than monthly, OR based upon the following milestone schedule:]
   2. Invoices shall be addressed to Customer personnel identified in the SOW.
   3. Invoices must specify the billing period and must list costs by each budget category or milestone, as applicable, for the invoice period and the cumulative amount billed to date.
   4. Invoices must include documentation for the costs billed which should tie back to the invoice and the budget categories or milestones, as applicable, for this project. Supporting documentation of costs should include:
      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 may be requested by MassTech.
   5. **Payment Terms**. Customer will pay Service Provider within thirty (30) days after receipt of invoice and determination by Customer that all proper documentation has been provided, unless Customer 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 the SOW.
   6. Service Provider shall be compensated on a cost-reimbursement basis for the performance of the Services. Notwithstanding the foregoing, Customer expects that the costs invoiced will be proportional to the work completed by Service Provider as of the date of the invoice.
   7. Customer will not reimburse for sales tax, interest, or other costs out of scope of this Agreement. In no case will Customer reimburse Service Provider in excess of the amount of funds obligated and allotted for payment by Customer under this Agreement or by modification to this Agreement.
2. **Notices**

All communications to Customer regarding legal issues shall be emailed to Customer’s General Counsel Jennifer M. Saubermann at saubermann@Customer.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

All communications regarding any other issues shall be emailed or delivered to the personnel specified in the SOW.

1. **Service Provider's Representations and Warranties**

As of the Effective Date, Service Provider hereby represents and warrants as follows:

* 1. Service Provider 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 Service Provider or any of its assets is bound.
  2. Service Provider 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.
  3. Service Provider and its employees are not employees, partners or joint-venturers of Customer. Service Provider 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. Service Provider 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.
  4. Service Provider 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. Service Provider agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment.
  5. Service Provider represents and warrants that all personnel performing Services hereunder are eligible to work in the United States at the time of execution of this Agreement and that Service Provider has a continuing obligation to ensure such status during the term of the Agreement.

1. **Indemnification and Hold Harmless**

To the extent allowable by law Service Provider shall indemnify, defend, and hold Customer harmless from and against any and all claims, liabilities, damages, and expenses, including reasonable attorneys’ fees and expenses, resulting from (a) any breach by Service Provider of this Agreement or (b) execution by Service Provider of the Services hereunder.

1. **Ownership**

Service Provider will retain all legal rights in any pre-existing property, including but not limited to intellectual, tangible, intangible, or data. Customer will retain ownership of all Deliverables as set forth in the Statement of Work. In the event that any Service Provider property is contained within Deliverables, Service Provider grants Customer a perpetual, royalty free, worldwide license to utilize such property as necessary for function of the Deliverables.

1. **Damages Cap and Disclaimer**

Excluding damages caused by negligence, intentional misconduct or intellectual property infringement, a) damages shall be capped at two times amounts paid under this Agreement, and b) neither Party will be liable to the other or to any third party for loss of profits, special, indirect, incidental, consequential or exemplary damages, in connection with the performance of any obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

1. **Assignment and Subcontracting**

Unless required by law Service Provider shall not assign nor in any way transfer any interest in this Agreement without the prior written consent of Customer.

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

In accordance with the Massachusetts Statewide Records Retention Schedule, Service Provider will keep adequate records to document the expenditure of funds and the activities supported by this Agreement for a minimum of seven (7) years from final payment or until litigation is resolved if filed within that period (the “Retention Period”). Service provider, 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 Service provider 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 Service Provider shall refund to Customer the amount determined by such audit within thirty (30) days of Service Provider’s receipt of such audit and demand.

1. **Publicity**

Any use of Customer’s name or logo by Service Provider, including, but not limited to, on websites, in the titles of programs, in publications and reports, in press releases, on placards at meetings, or in paid advertisements, must be pre-approved in writing by authorized staff of Customer. Service Provider shall get written consent from Customer prior issuing press releases, announcing events, or posting any signs or media directly related to this specific Agreement. Service Provider shall not represent that positions taken or advanced by it represent the opinion or position of Customer in any media produced.

1. **Public Records**

As a public entity, Customer 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 either

Party and/or its employees are subject to public disclosure. Services Provider should not submit any information to Customer that it does not want publicly disclosed, and should assume that all submissions are subject to public disclosure without any prior notice, even if marked confidential. If Service Provider wishes to have Customer treat certain information or documentation as confidential, Service Provider must submit a written request to Customer’s General Counsel specifying the type of information Service Provider wishes to be treated as confidential along with a detailed explanation of the statutory exemption(s) from the Public Records Law. Customer’s General Counsel is the sole authority within its institution for making determinations on the applicability and/or assertion of an exemption to the Public Records Law.

1. **Lobbying**

No funds under this Agreement 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.

1. **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 Service Provider agrees to bring any Federal or State legal proceedings arising hereunder in which the Commonwealth or Customer 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.

1. **Force Majeure**

If either party fails to fulfill its obligations hereunder, when such failure is due to an act of

God, or other circumstance beyond its reasonable control, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this Agreement, provided however, that in no event shall such time extend for a period of more than 30 days.

1. **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.

1. **Headings**

The paragraph headings contained herein are for convenience of reference only and shall not be construed as defining or limiting the matter contained thereunder.

1. **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.

1. **Entire Agreement, Exhibits and Amendments**

The parties understand and agree that this Agreement, its exhibits and any amendments supersede all other verbal and written agreements and negotiations by the parties regarding the matters set forth herein and can be amended only through a written document executed by both parties. The following are attached to and incorporated into this Agreement:

* **Exhibit 1 – Project Scope**
* **Attachment A – Budget and Invoice Template** [delete if not applicable]

**Massachusetts Technology Park Corporation ICMPartnerName**

**d/b/a Massachusetts Technology Collaborative**

**By:**  **By:**

**Name:**  **Name:**

**Title:**  **Title:**

**Date:** **Date**:

**Exhibit 1**

**Statement of Work**

Pursuant to the terms and conditions of the Agreement and this SOW, Customer and Service Provider agree as follows:

1. **Responsibilities**

Service Provider shall perform the agreed upon work in accordance with the specifications set forth in Section 3 below.

1. **Project Personnel**

Both Customer and Service Provider have designated the following persons to serve as Project Managers to support effective communication between Customer and Service Provider and to report on the project progress. Each party will endeavor to maintain the continuity of its respective project personnel.

For Customer: ICMProjectManager ( @masstech.org) (508-870-0312)

Customer Contact for Invoicing Matters: ICMProjectAdministrator ( @masstech.org) (508-870-0312)

For Service Provider: ICMPrimaryContactPersonFirstName ICMPrimaryContactPersonLastName (ICMPrimaryContactPersonEmail) (ICMPrimaryContactPersonPhone)

Service Provider Contact for Invoicing Matters: ICMPrimaryContactPersonFirstName ICMPrimaryContactPersonLastName (ICMPrimaryContactPersonEmail) (ICMPrimaryContactPersonPhone)

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

1. **Project Plan**
2. **Overview**
3. **Tasks**

Service Provider shall complete the following Tasks:

1. **Schedule**
2. **Deliverables**

**Due:**

\*Customer will not process payments on invoices if there are outstanding Deliverables.

[*Note to drafter: all deliverables must be due within the term of this agreement- extend term date as needed*]

1. **Budget**

**Attachment A**

**Budget & Invoice SPREADSHEET [Delete if not applicable]**

**SEE EXCEL SPREADSHEET**