**MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

**Combined Operating Funds and Capital Funds Grant Agreement**

**Between Massachusetts Technology Collaborative and ICMPartnerName**

This Combined Operating Funds and Capital Funds Grant 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 (“Grantor”), 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 ("Grantee").

**Whereas,** Grantor and Grantee desire to enter into a grant agreement under which Grantee may perform certain activities as described herein that carry out a public purpose that supports the mission of Grantor (the “Grant Activities”), and does not provide consideration for the acquisition of real, tangible, or intellectual property or activities for Grantor’s direct benefit or use, and,

**Whereas**, such Grant Activities shall be specified in Project Scopes (“PS” or “PSs”) 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**

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:

(a) Grantor when the Grantee fails to comply with the terms and conditions of this Agreement, provided Grantor gives Grantee notice of non-compliance and Grantee does not remedy such non-compliance within 30 days of such notice. Non-compliance includes failure of Grantee’s project to move forward in accordance with the PS for any reason.

(b) Grantor when the Grantor has cause, including, but not limited to, a lack of adequate record-keeping on the part of Grantee such that Grantor is unable to ensure the Grant Funds are being utilized as reported. Grantee shall return any Grant Funds not in compliance with the purpose listed herein.

(c) Mutual agreement of Grantor and Grantee.

(d) Grantor in the event of loss of availability of sufficient funds for the purposes of Grant Activities hereunder, or in the event of an unforeseen public emergency or other change of law mandating immediate Grantor action inconsistent with performing its obligations. In the event of loss of funds, Grantor agrees to notify Grantee as promptly as possible, so Grantee can limit continued performance under this Agreement.

Upon termination Grantee shall, unless otherwise agreed, cease work hereunder and provide to Grantor the Grant Activity Deliverables set forth in the PS.

Sections 5, 6, 8, 11 and 15 of this Agreement shall survive termination.

1. **The Grant**

As full compensation for Grantor’s share of the capital and non-capital costs for the performance of all work and in respect of all other direct and indirect cost expenses incurred in connection therewith, Grantor shall pay Grantee as follows: up to **[WRITE OUT] Dollars** ($ ) for non-capital costs (the “Operating Grant”), and up to **[WRITE OUT] Dollars** ($ ) for capital costs (the “Capital Grant”), together up to a maximum amount of **[WRITE OUT] Dollars** **($ICMContractAmount**) (the “Grant”), for the cost elements identified in the Project Budgets (Exhibits 2 and 3) to be funded with Grantor funds, subject to the provisions and restrictions contained herein. In executing this Agreement Grantee acknowledges and agrees that its receipt of the Grant does not create any rights of preference for Grantee to receive subsequent funding from Grantor, and the release of Grant funding by Grantor is subject to Grantor’s receipt of capital funding for this project from the Commonwealth of Massachusetts in sufficient amounts to reimburse Grantee for eligible expenses.

1. **Payments and Invoices**

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

1. **Allowable Charges**
2. **Allowable Capital Grant Charges**.

i. **Capitalized Costs**. All reimbursed costs must be considered actual capital costs and be capitalized as such on Grantee’s books. The costs incurred must be in the performance of the PS 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 Grantee’s employees that are deemed to be capitalizable under the terms of the PS, 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 Grantee approved rates should be submitted at the time of proposal

4. Capitalized Subcontractors/Consultants: capital services provided by Grantee’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

ii. **Capitalized Indirect Costs**. Grantee shall be reimbursed for such capitalized indirect costs (e.g., General and Administrative Overhead) at their government-approved rate. Grantee shall include evidence of their approved indirect cost rate with its first invoice, if not previously provided. If the Grantee’s indirect cost rate changes in any future years, Grantee will provide evidence of the approval of such change with the next applicable invoice.

1. **Allowable Operations Grant Charges**
	1. **Direct Costs**. Grantee shall be reimbursed for direct costs incurred in the performance of the activities and as specified on a line item of the Project Budget, as follows:
		1. Direct Labor: activities performed by Grantee’s employees under the terms of the PS 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: activities performed by Grantee’s subcontractors/consultants at the actual cost paid for project activities 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.)
		5. Travel: the reasonable and necessary actual costs incurred for travel, lodging, meals and incidental expenses, as set forth in the Budget. Any and all claims for meal expenses shall be supported by detailed, itemized receipts. Grantor 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.
	2. **Indirect Costs**. Grantee shall be reimbursed for such indirect costs (e.g., General and Administrative Overhead) at their government-approved rate or at the Grantee’s actual indirect cost rate calculated in accordance with the Grantee’s applicable regulation, which shall not exceed the rate set forth in the Project Budget.
2. **Budget Adjustments**. The parties acknowledge that the costs listed in the Project Budget are estimated. Therefore, Grantee may shift funds between the line items associated with each category if 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 according to Grantor’s Budget Guidelines in effect then. Any budget adjustments impacting the funding to be paid by Grantor must always be eligible for capital expenses incurred by Grantee. Grantee shall notify Grantor through its Semi-Annual reports, or in writing as needed between reporting periods, of any potential material variances to the expenditure schedule. Grantor shall also notify Grantee of any changes in availability of funding that it expects could impact the schedule.
3. **Invoices**
	1. Invoices must be addressed to all Grantor and Grantee personnel identified in Section 2, Project Personnel, of the PS**.**
	2. Grantee invoices shall be submitted along with the applicable **Budget and Invoice Spreadsheet (Attachment B**)and must include an explanation for any variances to the contract budget on the supporting schedule. The invoice must include any Deliverables that are due at the time of submission. The invoice must also include the **Invoice Certification Form (Attachment A)**, signed by an authorized representative of Grantee, as well as supporting documentation for reimbursable costs. Any invoice submitted without all of the required documentation will be found to be incomplete and will not be processed for payment.
	3. Grantee shall invoice Grantor no more frequently than monthly nor less frequently than quarterly. Invoice documentation must be in accordance with the project requirements set forth in the Project Scope. Invoices shall provide reasonable documentation including system-generated detailed transaction based activity reports showing income and expenses to provide evidence of costs incurred for which reimbursement is being requested and any Required Match that is being submitted for the invoice period. Additional supporting documentation to support costs may be requested by Grantor 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 Grantee prior to submission to Grantor
		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 Grantor
		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 Grantor
		6. To the extent Grantee has an accounting-system that can track and generate detailed transaction reports, for this project alone, which would tie back to invoice amounts and budget line items and categories, Grantor may review this in lieu of documentation as listed in this section, subject to Grantor approval of form and format.
4. **Payment Terms**. Grantor shall pay the Grantee within thirty (30) days after receipt of invoice and determination by Grantor that all proper documentation has been provided, unless Grantor should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of this Agreement. Payment is contingent upon performance of the work, and submission of Deliverables as specified in Project Scope.
5. **Notices**

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

1. **Grantee's Representations and Warranties**

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

1. Grantee 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 Grantee or any of its assets is bound.
2. Grantee 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. Grantee and its employees are not employees, partners or joint-venturers of Grantor. Grantee 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. Grantee 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. Grantee 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. Grantee agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment.
5. All personnel performing Grant Tasks hereunder are eligible to work in the United States at the time of execution of this Agreement and that Grantee has a continuing obligation to ensure such status during the term of the Agreement.
6. **Indemnification and Hold Harmless**

Grantee shall indemnify, defend and hold harmless Grantor and its employees, officers and agents (collectively “Grantor Indemnified Persons”) from and against any and all third-party claims, demands, and liabilities (including, but not limited to, attorneys’, accountants’ and other professionals’ fees and expenses, litigation and court costs and expenses, amounts paid in settlement and amounts paid to discharge judgments) relating to or arising out of (i) Grantee’s project hereunder actually or allegedly infringing on or violating any patents, copyrights, trade secrets, licenses, or other intellectual property rights of a third-party, (ii) any breach of Grantee’s representations and warranties in this Agreement, or (iii) Grantee’s failure to comply with all laws, rules or regulations applicable to Grantee or Grantee’s project under this Agreement. Grantee will have no obligation to indemnify Grantor to the extent the liability is resulting from any negligent acts or omissions or reckless misconduct of Grantor.

1. **Ownership**

Grantee shall retain all ownership interests in Grantee Property, defined as pre-existing material including, but not limited to, any products, software, materials and methodologies proprietary to Grantee, and any trade secrets, know-how, methodologies and processes related to Grantee’s organization. Grantee shall retain all ownership interests in, and Grantor hereby assigns to Grantee all right, title, and interest to, all Work Product, defined as materials, reports, deliverables, research, and developed content created as a result of the Grant. Grantee hereby grants to Grantor an irrevocable, non-exclusive, non-commercial, worldwide, royalty-free, fully paid up license (the "License") to reproduce, translate, and distribute copies of Work Product, for non-profit purposes. Grantee shall not under any circumstances include Grantee Property in Work Product provided to Grantor. In the event any Grantee Property is contained within Work Product provided by Grantee to Grantor, it shall be deemed covered by the License. Grantee understands all information provided to Grantor under this Agreement, including but not limited to Grantee Property, is subject to disclosure as set forth in Section 15, Public Records. Grantee shall own all right, title and interest to equipment purchased under the PS, subject to restrictions, if any, set forth herein.

1. **Capital Asset Title, Restrictions and Location**

Grantee shall:

1. Purchase and take title to equipment and other capital assets as specified in the Project Budget in **Exhibit 1**, and **Attachment B (Budget and Invoice Spreadsheet)** (collectively “Capital Assets”), subject to a security interest in favor of Grantor, to ensure the full and faithful performance of this Agreement. Grantor may perfect the security interest by filing a financing statement in the proper jurisdiction.
2. Not sell, lease, transfer, pledge, or encumber the Capital Assets, nor pledge the Capital Assets as security or collateral in connection with any financing, loan, debt or line of credit for a minimum of five (5) years after the Term, except with the prior written approval of Grantor. Any such sale, lease, transfer, pledge or encumbrance, unless approved in writing by Grantor, shall be a material breach under this Agreement giving rise to the remedies set forth herein.
3. Provide, at any time during the Term of this Agreement, Grantor or Grantor’s agent the right to access, inspect and witness the operation of the Capital Assets at Grantor’s facility, at dates and times mutually agreed to by Grantor and Grantee, but not later than 10 business days after Grantor requests access for inspection.
4. Ensure that all Capital Assets remain in the Commonwealth for a minimum of five (5) years after the Term. If this subsection (d) is breached then, at Grantor's sole discretion, either:

Grantee must repay to Grantor the fair market value, at the time of breach, of the equipment purchased with Grant Funds, for use by a nonprofit or academic ecosystem partner, OR

all equipment must be returned to Grantor for transfer to an academic or nonprofit partner.

1. **Damages Cap and Disclaimer**

Excluding Grantee’s obligations under Section 6 (Indemnification and Hold Harmless) and claims for bodily injury or death, each party’s liability shall be limited to the amounts paid under this Agreement. Neither party shall be liable to the other for any indirect, incidental, special, consequential or punitive damages, or for lost profits or loss of opportunity.

1. **Assignment**

Unless required by law, Grantee shall not assign nor in any way transfer any interest in this Agreement without the prior written consent of Grantor.

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

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

1. **Publicity**

Any use of Grantor’s name or logo by Grantee, 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 Grantor. Grantee shall get written consent from Grantor prior issuing press releases, announcing events, or posting any signs or media directly related to this specific grant. Grantee shall not represent that positions taken or advanced by it represent the opinion or position of Grantor in any media produced.

1. **Public Records**

As a public entity, Grantor 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 Grantor and/or its employees are subject to public disclosure. Grantee should not submit any information to Grantor 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 either Grantee wishes to have Grantor treat certain information or documentation as confidential, Grantee must submit a written request to Grantor’s General Counsel specifying the type of information that Grantee wishes to be treated as confidential along with a detailed explanation of the statutory exemption(s) from the Public Records Law. Grantor’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 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.

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 Grantee agrees to bring any Federal or State legal proceedings arising hereunder in which the Commonwealth or Grantor 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 – Invoice Certification Form**
* **Attachment B – Budget and Invoice Spreadsheet**

**Massachusetts Technology Park Corporation ICMPartnerName**

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

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

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

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

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

**Exhibit 1**

**Project Scope**

 Pursuant to the terms and conditions of the Agreement and this PS, Grantor and Grantee agree as follows:

**1. Responsibilities**

Grantee is solely responsible for all project decisions, and the preparation of all plans and specifications.

**2. Project Personnel**

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

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

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

For Grantee: ICMPrimaryContactPersonFirstName ICMPrimaryContactPersonLastName (ICMPrimaryContactPersonEmail) (ICMPrimaryContactPersonPhone)

Grantee 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.

**3.** **Project Plan**

**Overview**

**Tasks**

**Schedule** [delete if not needed]

**Deliverables**

1. **Semi-Annual Reports**

These reports are to update progress on all key tasks involved in the development of each activity and otherwise identified within the Project Plan. Each report shall include current status of the Project, detail on any variation of the Tasks completed, lessons learned, and, with regards to agreed-upon goals, any relevant data and the progress made against these goals. The reports shall also include information about any foreseeable changes to the Project Plan. Any documentation: (e.g. agendas, attendees, minutes, and communication documents) from advisory or working groups (including, but not limited to, those of any governance/advisory boards) supporting or participating in the Project will also be submitted with each report.

**Due:**

1. **Quarterly Metrics Report** [delete if not applicable]

These reports shall include updates on a set of metrics to be agreed upon by Grantor and Grantee.

Form and format of this report, in addition to submittal method, will be provided by Grantor on or before .

**Due:**

1. **Final Report**

To be submitted with the final invoice. The Final Report shall include an overview of all tasks completed, including detail on any variation of the projects completed, lessons learned, current status, project benefits, and brief overview of achievements as well as any subsequent plans for future activity relating to this Project.

**Due: ICMContractPeriodofPerformanceEndDate**

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

1. **Budget**

**Attachment A**

**Invoice Certification Form**

**Organization:** ICMPartnerName

**Grant Number**: ICMContractNo

**Invoice Number:**

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

• Have been recognized on Grantee’s books and recorded as a capital expenditure or operations expenditure as appropriate

• Are allowable under and consistent with the terms and conditions of the Agreement and approved budget

• Are reasonable and appropriately allocated to the project, and

• Are not reimbursed by any other funding source

**Certified by:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title of Authorized Signing Authority

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Authorized Signing Authority

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact email and phone number

**Attachment B**

**Budget and Invoice Spreadsheet**

See associated Excel Spreadsheet