

MASSACHUSETTS TECHNOLOGY COLLABORATIVE

General Terms and Conditions

The following General Terms and Conditions are issued by the Massachusetts Technology Park Corporation, an independent public instrumentality of the Commonwealth of Massachusetts doing business as the Massachusetts Technology Collaborative ("MTC"). ***Any changes or electronic alterations to the official version of this form shall be void.*** Participants shall be bound by these General Terms and Conditions upon execution and submission to MTC. These General Terms and Conditions will be incorporated by reference into any Task Order for any financial assistance award executed by the Participant and MTC.

1. Definitions

"Agreement" means these General Terms and Conditions and all Task Orders entered into hereunder and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of these General Terms and Conditions.

"Commonwealth" means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).

"Deliverable" means any tangible product to be delivered as an element of performance under a Task Order.

"Grant" means the funding awarded by MTC's Board of Directors as set forth in the applicable Task Order.

"General Counsel" means MTC's General Counsel, or, in the event that no Person holds such title at the time in question, such other legal counsel to MTC as MTC's Executive Director may designate.

"Governmental Authority" means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"JAI" means the John Adams Innovation Institute created by the Economic Stimulus Bill, signed by the Governor of the Commonwealth in January 2004.

"MTC" means the Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.

"Participant" means any Person who has sought funding or other financial support from, or has submitted one or more proposals for projects to, MTC and has been awarded such financial support or funding under any of MTC's programs or initiatives as in effect from time to time.

"Project" means services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MTC, programs provided or other commitments authorized under a Task Order.

"Project Administrator" means the individual, set forth in the applicable Task Order, employed by MTC who shall have secondary responsibility for managing the Project for MTC.

"Project Manager" means the individual, set forth in the applicable Task Order, employed by MTC and by Participant, respectively who shall have primary responsibility for managing the Project.

"Project Budget" means the and costs associated with the tasks set forth in the Project Plan which shall be reimbursed by MTC pursuant to the terms and conditions of this Agreement and the applicable Task Order.

"Project Plan" means the set of tasks required to complete the Project as set forth in the applicable Task Order.

"Public Records Act" means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto.

"RET" or the "Trust" means the Commonwealth's Renewable Energy Trust Fund created by the Electric Utility Restructuring Act of 1997.

“Task Order” means the documentation that sets forth the Grant awarded, the specifics of the Project for which the Grant was awarded and all terms and conditions for the application and use of such Grant funds, including the Project Plan and Budget.

2. Term and Termination

- a) The effective start date of performance under a Task Order shall be the date such Task Order has been executed by an authorized signatory of the Contractor and MTC.
- b) This Agreement may be terminated by either MTC or Participant at any time for a material breach of any term of the Agreement. In the event of such termination, compensation shall be paid to the Participant for the actual costs of allowable expenses incurred for work performed and the reasonable and necessary actual direct costs incurred in the performance of the work pursuant to the applicable Task Order prior to the effective date of the termination.
- c) MTC may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate MTC action inconsistent with performing its obligations under this Agreement.

3. Payments and Compensation

The Participant shall only be compensated for performance delivered and accepted by the MTC in accordance with the specific terms and conditions of the applicable Task Order. Acceptance by the Participant of any payment or partial payment, without any written objection by the Participant, shall in each instance operate as a release and discharge of MTC from all claims, liabilities or other obligations relating to the performance of a Task Order.

4. Insurance

- a) Specific requirements for insurance shall be set forth in the applicable Task Order.
- b) *Insurance Requirements for Public Agencies.* Notwithstanding the foregoing provision of this Section 4, in the event the Participant is a public agency (as defined in Chapter 7, Section 39A of the Massachusetts General Laws), then MTC agrees that Participant may self insure to the extent permitted by law as though Participant were the insurer under all insurance required for its activities under the applicable Task Order. Participant hereby waives all offsets and defenses that it may otherwise have with respect to the insurance required to be maintained hereunder. The grant of the right to self insure is subject to the requirements that (i) the contractors and subcontractors of Participant carry insurance of the types and levels required for their activities under the applicable Task Order; (ii) that such insurance shall name MTC, and such other entities as MTC may request, as additional insureds, and (iii) no settlement or payment, for any claim or loss, injury or damage or other matter as to which MTC may be charged with an obligation to make any payment or reimbursement, shall be made by the Participant without the written approval of MTC.

5. Access and Use

Participant agrees to license or otherwise make available to MTC 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 MTC's use and dissemination.

6. Publicity

- a) The Participant shall collaborate with MTC on any press releases, events, signs and to plan for any news conference concerning the Project. In any media produced by Participant, Participant will not represent that positions taken or advanced by it represent the opinion or position of MTC.
- b) The Participant agrees that MTC 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.

7. Assignment and Subcontracting

The Participant shall not assign or in any way transfer any interest in this Grant or the Agreement without the prior written consent of MTC, including subcontracting any services except as otherwise included in the Participant's Project Plan and Project Budget.

8. Nondiscrimination

The Participant agrees to comply with all applicable Federal and State statutes, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, or for exercising any rights afforded by law.

9. Indemnification

- a) To the fullest extent permitted by law, Participant shall indemnify and hold harmless the Commonwealth, MTC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MTC, 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 misconduct of Participant. Without limiting the foregoing, Participant shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or are 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. The foregoing notwithstanding, Participant shall not be liable for (i) any Damages sustained, incurred or suffered by or imposed upon any Covered Person resulting from any negligent acts or omissions or reckless misconduct of MTC, and (ii) except for liability for death or personal injury caused by the negligence or willful misconduct of the Participant or for claims of infringement of a third party's intellectual property by Participant, the aggregate liability of Participant under this Agreement shall not exceed the greater of the amount of the Grant or the amount recovered under any applicable insurance coverage.
- b) In no event shall either party be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to Participant's performance of the Project under this Agreement.

10. Public Records

As a public entity, MTC is subject to the Massachusetts Public Records Law (set forth at Massachusetts General Laws Chapter 66) and thus documents and other materials made or received by MTC and/or its employees are subject to public disclosure. All information received by MTC shall be deemed to be subject to public disclosure, except as otherwise provided in the procedures set forth in Attachment A hereto. By signing this Agreement, Participant acknowledges, understands and agrees that the procedures set forth in Attachment A are applicable to any documents submitted by Participant to MTC, including but not limited to any acknowledgements set forth therein, and that Participant shall be bound by these procedures.

11. Audit

At any time period prior to the completion of the Project and as otherwise provided in this Section, MTC will have the right to audit Participant's or its other agents' records to confirm the use of the Grant proceeds. If such audit reveals that any portion of the Grant was utilized for purposes not permitted under this Agreement, then Participant shall refund to MTC the amount determined by such audit within thirty (30) days of Participant's receipt of such audit and demand. Participant shall maintain books, records, and other compilations of data pertaining to the Grant payments made under this Agreement to the extent and in such detail as shall properly substantiate use of such payments. All such records shall be kept for a period of seven (7) years, starting on the first day after True-Up Progress Payment under this Agreement (the "Retention Period"). 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 audit or other action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MTC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy at reasonable expense, the books, records, and other compilations of data of the Participant which pertain to the provisions and requirements of this Grant. Such access may include on-site audits, review and copying of records.

12. Conflict of Interest

Participant acknowledges that all MTC employees are subject to the Massachusetts Conflict of Interest statute, located at Massachusetts General Laws Chapter 268A.

13. 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.

14. 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 under this Grant in which the Commonwealth or MTC 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.

15. 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 of this Agreement 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.

16. Waivers

Conditions, covenants, duties and obligations contained in this Agreement 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.

17. Notice

All communications to MTC 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: Matthew L. Schemmel, Senior Counsel

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by MTC.

18. Amendments, Entire Agreement and Attachments

All conditions, covenants, duties and obligations contained in the Agreement may be amended only through a written amendment signed by the Participant and MTC. The parties understand and agree

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that this Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the matters contained herein. The following are attached and incorporated into this Agreement:

- i. Attachment A – MTC’s Sensitive Information Policy and Procedures
- ii. Attachment B – Form of Task Order; and all Task Orders entered into in accordance with the terms of this Agreement and attached hereto

PARTICIPANT’S AUTHORIZED SIGNATORY: _____
(signature)

Print Name: _____

Title: _____

Date: _____

(Check One): _____ Organization _____ Individual

Full Legal Organization or Individual Name: _____

Doing Business As Name (If Different): _____

Tax Identification Number: _____

Address: _____

Telephone: _____ FAX: _____

E-Mail Address: _____ URL: _____

Attachment A

THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE POLICY AND PROCEDURES REGARDING SUBMISSION OF “SENSITIVE INFORMATION”

The Massachusetts Technology Collaborative and the Massachusetts Renewable Energy Trust which it administers (collectively referred to herein as “MTC”) is subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (the “Public Records Act”), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, “public records” include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MTC. As a result, any information submitted to MTC by a grant applicant, recipient grantee, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the “Submitting Party”) is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, “public records” do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MTC’s enabling act, M.G.L. Chapter 40J. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by MTC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the “Trade Secrets Exemption”).

It is MTC’s expectation and belief that the overwhelming percentage of documents it receives from a Submitting Party does not contain any information that would warrant an assertion by MTC of an exemption from the Public Records Act. Submitting Parties should therefore take care in determining which documents they submit to MTC, and should assume that all documents submitted to MTC are subject to public disclosure without any prior notice to the Submitting Party and without resort to any formal public records request.

In the event that a Submitting Party wishes to submit certain documents to MTC and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

1. At the time of the Submitting Party’s initial submission of documents to MTC, the Submitting Party must provide a cover letter, addressed to MTC’s General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents’ disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party’s responsibility to provide detailed explanations for each such document.
2. At the time of the Submitting Party’s initial submission of documents to MTC, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as “Sensitive Information.” It is the Submitting Party’s responsibility to ensure that all such documents are sufficiently identified as “Sensitive Information,” and Submitting Party’s designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

Information submitted to MTC in any form other than a hard copy document will not be subject to the procedures set forth in this Attachment. For example, information submitted by e-mail, facsimile and/or verbally will not be subject to these procedures and may be disclosed at any time without notice to the Submitting Party.

3. Documents that are not accompanied by the written notification to MTC’s General Counsel or are not properly identified by the Submitting Party as “Sensitive Information” at the time of their initial

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submission to MTC are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Submitting Party with notice of any formal public records request for documents, as set forth below, shall be inapplicable.

4. At the time MTC receives documents from the Submitting Party, any such documents designated by Submitting Party as "Sensitive Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate MTC staff. By submitting a grant application, request for response, or any other act that involves the submission of information to MTC, the Submitting Party certifies, acknowledges and agrees that (a) MTC's receipt, segregation and storage of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by MTC that such documents fall within the Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MTC is not liable under any circumstances for the subsequent disclosure of any information submitted to MTC by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or MTC was negligent in disclosing such documents.
5. In the event that MTC receives an inquiry or request for information submitted by a Submitting Party, MTC shall produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has previously designated as "Sensitive Information", the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and that a formal, written public records request must be submitted by the requesting party to MTC's General Counsel for a determination of whether the subject documents are exempt from disclosure.
6. Upon the General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of MTC's receipt of the public records request, and MTC may, but shall not be required to provide Submitting Party an opportunity to present MTC with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.
7. The General Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

The General Counsel is the sole authority within MTC for making determinations on the applicability and/or assertion of an exemption to the Public Records Act. No employee of MTC other than the General Counsel has any authority to address issues concerning the status of "Sensitive Information" or to bind MTC in any manner concerning MTC's treatment and disclosure of such documents.

Furthermore, the potential applicability of an exemption to the disclosure of documents designated by the Submitting Party as "Sensitive Information" shall not require MTC to assert such an exemption. MTC's General Counsel retains the sole discretion and authority to assert an exemption, and he may decline to exert such an exemption if, within his discretion, the public interest is served by the disclosure of any documents submitted by the Submitting Party.

8. MTC shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
9. In the event that MTC determines that the subject documents are exempt from disclosure, the requesting party may seek review of MTC's determination before the Supervisor of Public Records, and MTC shall notify the Submitting Party in writing in the event that the requesting party pursues a review of MTC's determination.
10. In the event the requesting party pursues a review of MTC's determination that the documents

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are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MTC to disclose such documents to the requester, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

11. In the event that MTC determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his discretion, MTC shall not assert an exemption, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

The Submitting Party's submission of documentation to MTC shall require a signed certification that Submitting Party acknowledges, understands and agrees with the applicability of the foregoing procedures to any documents submitted to MTC by Submitting Party at any time, including but not limited to the acknowledgements set forth herein, and that Submitting Party shall be bound by these procedures.

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.