

**AGREEMENT OF MAINE TECHNOLOGY INSTITUTE  
AND**

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**DEVELOPMENT LOAN**

**FOR EARLY STAGE COMPANY**

This Development Loan Agreement (“Agreement”) is made as of \_\_\_\_\_ (“Effective Date”) by and between the Maine Technology Institute (“MTI”), a non-profit corporation organized under the laws of the State of Maine and \_\_\_\_\_, a [corporation, partnership, limited liability company, sole proprietorship or other business entity] organized under the laws of the State of \_\_\_\_\_, federal tax identification number \_\_\_\_\_ (“Recipient”), collectively referred to in this Agreement as the Parties (“Parties”).

**1.0 INTRODUCTION**

- 1.1 MTI was established by the Maine Legislature to stimulate and support research and development activity leading to the commercialization of new products, processes, and services in order to enhance the competitive position of Maine’s technology-intensive industrial sectors, and thereby promote economic development and job creation. MTI’s goal is to contribute to the long-term development of a statewide research, development, and product deployment infrastructure, thereby enhancing the competitive position of Maine’s technology intensive industries, while supporting clusters of industrial activity and creating jobs for Maine people.
- 1.2 The MTI Development Loan Program for early stage companies (“Development Loan Program”) is targeted to support research, development and commercialization of an innovative product, process or service.
- 1.3 Recipient has submitted a complete application under the Development Loan Program to MTI (“Application”).
- 1.4 Recipient will undertake a project leading to commercialization of a new product or service (“Project”). The description of the Project is included in Appendix A. The technology to be developed and commercialized in the Project is referred to in this Agreement as the “Technology.”
- 1.5 MTI, in reliance upon Recipient’s representations, warranties and covenants contained in the Application and in this Agreement, makes this Development Loan (“Development Loan”) to Recipient in order to promote these mutual interests.

**2.0 CONSIDERATION**

- 2.1 For valuable and sufficient consideration received and to be received, including, but not limited to, performance of the Parties’ respective obligations under this Agreement, the Parties hereby agree, as follows.

3.0 DEVELOPMENT LOAN AND SPENDING COMMITMENT

- 3.1 Relying upon Recipient's representations in its Application, and upon Recipient's compliance with all terms and conditions of this Agreement, MTI will provide a Development Loan of up to \$\_\_\_\_\_ to Recipient to share in the costs of the Project.
- 3.2 The Development Loan shall be disbursed to the Recipient by MTI in accordance with the payment schedule and Project Deliverables set forth in Appendix B, subject to Recipient's full and timely compliance with the terms and conditions of this Agreement.
- 3.2 If Development Loan funds are to be used for the purchase of equipment, machinery, fixtures, or other tangible personal property (collectively, the "Equipment"), then Recipient shall, at the request of MTI and prior to disbursement of any Development Loan funds, grant MTI a first priority security interest in the Equipment pursuant to the terms of a written Security Agreement that is satisfactory in both form and substance to MTI (the "Equipment Security Agreement"). Unless otherwise agreed to by MTI, all Development Loan disbursements for Equipment shall be (a) made jointly payable by MTI to Recipient and Recipient's Equipment supplier, and (b) subject to satisfaction of such other conditions as MTI may require to ensure that the portion of the Development Loan set aside for the purchase of Equipment is in fact used by, and enables, Recipient to purchase the Equipment.
- 3.4 If Development Loan funds are to be used for the purchase of real property or real property interests (collectively, the "Real Property"), then Recipient shall, prior to disbursement of any award funds, execute a Mortgage Deed, Security Agreement, and Financing Statement with MTI that is satisfactory in both form and substance to MTI (the "Mortgage Deed and Security Agreement"). The Mortgage Deed and Security Agreement shall, unless otherwise agreed to by MTI, grant MTI a first priority mortgage against the Real Property.
- 3.5 MTI shall not disburse any Development Loan amounts following written notice by MTI to Recipient of Suspension or Termination of Development Loan for Project Failure under Section 7 or following written notice by MTI to Recipient of an Event of Default under Section 9.
- 3.6 Recipient shall expend all Development Loan funds only for Project purposes and only in accordance with its Application and this Agreement. Recipient shall expend Development Loan funds only in proper proportion to the matching funds required to be contributed by Recipient under Appendix B. Recipient shall not expend Development Loan funds for any purpose not expressly authorized in this Agreement or by subsequent written authorization from MTI.
- 3.7 Any expenditure or obligation to expend funds by Recipient intended to benefit the Development Loan Project prior to the effective date of this Agreement is at Recipient's risk. MTI may, in its sole discretion, decline to approve such expenditures or obligations for reimbursement or as matching funds under the Development Loan.
- 3.8 MTI may review Recipient's expenditure of Development Loan and matching funds regularly throughout the award period, and may suspend, curtail, terminate, or require repayment of, Development Loan funds if MTI determines, in its sole discretion, that Recipient has not complied fully with Agreement terms and conditions on expenditure of Development Loan and matching funds.
- 3.9 This Agreement is in compliance with all applicable federal and state securities laws. The Parties acknowledge that: (i) MTI is granting the Development Loan exclusively for MTI's own account; (ii) the Development Loan is exempt from and will not be registered under the Securities Act of 1933 or qualified under the Maine Uniform Securities Act; and (iii) MTI is an accredited investor as that term is defined in Regulation D

promulgated by the Securities and Exchange Commission under the Securities Act of 1933.

- 3.10 Neither this Agreement, nor the acts of the Parties shall be deemed to create any relationship of third-party beneficiary, or of principal and agent, or of limited or general partnership, or of joint venture.

#### 4.0 TERM OF AGREEMENT

- 4.1 The term of the Agreement shall commence on the effective date of \_\_\_\_\_ and shall terminate on either \_\_\_\_\_ (five years following the deadline for completion of the Project as established in Appendix B), or upon payment in full of all amounts due to be paid by Recipient to MTI under this Agreement, whichever is later (“Termination Date”). The covenants set forth in Sections 6.6 (Technology Requirements), 6.7 (Reporting Requirements), 6.8 (Document Retention and Review), and 6.11 (Recipient Cooperation Concerning Intellectual Property) shall survive any such termination.
- 4.2 The Termination Date may be accelerated by MTI or Recipient pursuant to the provisions of Section 9, provided however that Recipient’s payment obligations under this Agreement and Recipient’s covenants in Sections 6.6 (Technology Requirements), 6.7 (Reporting Requirements), 6.8 (Document Retention and Review), and 6.11 (Recipient Cooperation Concerning Intellectual Property) shall survive any such termination.

#### 5.0 REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to MTI as follows, which representations and warranties shall be deemed to survive until the Termination Date:

- 5.1 Recipient has all requisite power and authority to execute and deliver the Agreement and to consummate the transactions contemplated thereby. The execution and delivery by the Recipient of the Agreement and the performance by the Recipient of its obligations thereunder have been duly authorized by all necessary action of its Directors and Shareholders. Neither the execution and delivery of the Agreement by the Recipient, nor the performance of Recipient’s obligations thereunder, will result in any violation or default under the Recipient’s articles of incorporation, bylaws, or other organizational documents, or under any indenture, mortgage, deed to secure debt, security agreement, loan agreement or other contract or any judicial or administrative decree, judgment or order, to which the Recipient is a party or by which Recipient is bound.
- 5.2 Recipient is a [corporation, partnership, sole proprietorship or other business entity] duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_, and has all requisite power and authority to own, lease and operate its property and conduct its business.
- 5.3 Neither this Agreement or any other documents, certificates or agreements required by MTI to be executed in connection with this Agreement, nor the Recipient’s Application to MTI for this Development Loan contains any untrue statement of a material fact or any omission of a material fact.
- 5.4 There has been no material adverse change in the business, assets, operations or financial conditions of Recipient, or in the matters described in the Application pertaining to the Project since Recipient’s submission of the Application.

- 5.5 Recipient, its Directors and Officers have not been convicted of a felony or debarred from participating in contracts with the State of Maine or federal government.
- 5.6 Recipient has filed all federal, state and local tax returns and reports as required by law. Recipient has paid all taxes, assessments and governmental charges due except those contested in good faith. Recipient has withheld or collected from its employees all required taxes, and has paid the same to the proper tax-receiving officers and authorized depositories. No deficiency assessment or tax lien by any federal, state, county or local authority is outstanding against Recipient's assets, property or business.
- 5.7 Recipient has set forth in Appendix C a description of all patents, copyrights, trademarks, trade secrets and other intellectual property rights owned or controlled by Recipient or any third party (collectively, "Background IP") that may be material to commercialization of the Technology, and Recipient owns or has secured all necessary rights in and to the Background IP to commercialize the Technology. Recipient will provide to MTI, at MTI's request, true and accurate copies of all license agreements, assignments and other agreements pertaining to such Background IP.
- 5.8 Recipient is not aware that it has infringed any patent, copyright, trademark, trade secret or other intellectual property right of any third party. The Recipient is not aware of any material violation or infringement by a third party of any of the Recipient's Intellectual Property (as defined in Section 10.1).
- 5.9 Recipient has disclosed any relationship, direct or indirect, between Recipient, its Officers, Directors or employees, and MTI, and are in compliance with the conflict of interest provisions of 5 M.R.S.A. Chapter 407, Section 15307.

## 6.0 ADDITIONAL COVENANTS

Recipient provides the following covenants to MTI which shall survive until the Termination Date, except the covenants set forth in Sections 6.6 (Technology Requirements), 6.7 (Reporting Requirements), 6.8 (Document Retention and Review), and 6.11 (Recipient Cooperation Concerning Intellectual Property) which shall survive beyond the Termination Date. Recipient shall promptly notify MTI of any violation of the following covenants:

- 6.1 Recipient shall use its best efforts to assure that all activities described in the approved Application are implemented, and shall expend Development Loan funds only for the purposes and in the amounts detailed in the approved Application, or by subsequent written approval of MTI. Recipient shall not assign, subgrant or subcontract the whole or any part of the Project unless specifically identified in the original Application, or unless subsequently authorized in writing by MTI.
- 6.2 Recipient shall assure that the key personnel listed in the Application perform their respective Project responsibilities as described in the Application. Recipient shall not substitute or otherwise permit someone other than the named key personnel to perform the assigned key personnel Project responsibilities without MTI's prior written consent.
- 6.3 Recipient will contribute all payments and services designated as Matching Funds in Recipient's Application, consistent with the payment schedule outlined in Appendix B.
- 6.4 If Recipient or its successor-in-interest is a partnership, association or joint venture, by the Recipient's execution of this Agreement each person comprising such partnership, association or joint venture shall be jointly and severally bound for all the obligations of Recipient under the Agreement.
- 6.5 Recipient shall notify MTI immediately of any event which reduces, or is likely to reduce, the Recipient's ability to undertake all work described in the approved Application consistent with the Appendix B Schedule and Deliverables, including but not

limited to Recipient's contribution of matching funds under the Appendix A Budget. Recipient agrees that any change in the scope of work outlined in Appendix B Project Schedule and Deliverables or any change in the Appendix A Budget greater than 10% of a major expense classification (including personnel, consultants, equipment, consumables, travel other and overhead indirect) must be approved in writing by MTI prior to expenditure.

- 6.6 Recipient shall submit disclosures relating to the Technology resulting from the conduct of the Project in accordance with MTI policies and procedures, as set forth in the Research Agreement (Appendix A) and Reporting Form (Appendix D). Without limiting the foregoing, Recipient shall keep adequate written and electronic records of Recipient's work (properly witnessed for use as invention records when appropriate), and shall submit such records to MTI when requested. Recipient shall promptly and fully report to MTI all Intellectual Property (defined in Section 10.1) or additional or improved Background IP (defined in Section 5.7) developed or obtained during or as a result of the Project.
- 6.7 Recipient shall submit reports to MTI as outlined in Appendix D, including reports at each scheduled completion date, a final report on the Project completion date established in Appendix D, annual reports following Project completion and commercialization disclosure reports. Such reports shall contain all information required by Appendix D. Recipient also shall submit reports in response to MTI surveys or requests for a period of five years following Project completion. Recipient shall cooperate with any MTI request for information or record review in connection with any audit.
- 6.8 Recipient shall maintain all records containing all particulars necessary to document the financial and other information to be reported to MTI pursuant to this Agreement. These records shall be available at all reasonable times for the purpose of verifying MTI's reports documenting Recipient's compliance with measures of performance under this Agreement.
- 6.9 Recipient shall attempt in good faith and with best efforts to commercialize any Technology and Intellectual Property created by Recipient under the Project, or any related Project, Service or Process, as required in Sections 10.0 and 11.0 below.
- 6.10 Recipient shall notify MTI of successful commercialization of the Technology and Intellectual Property created by Recipient under the Project and shall notify MTI of any revenues received by Recipient from commercialization or from any sale or transfer of rights to the Technology and Intellectual Property, or any related Product, Service or Process, as required in Section 11.0 below.
- 6.11 Recipient shall cooperate fully with MTI in the preparation and execution of any documentation requested by MTI to effect the conveyance of license rights from Recipient to MTI referenced in Section 10.3(c) and (d), and in the preparation and execution of any documentation requested by MTI concerning the preparation, filing, prosecution, maintenance and enforcement of intellectual property rights by MTI under Section 10.3(e).
- 6.12 Recipient shall notify MTI of any material change in Recipient's legal status, financial status, or compliance status with federal and state laws, or of any material change in the status of Intellectual Property rights represented in Section 5.0 above.
- 6.13 Recipient will maintain a place of business, as well as good standing to do business, in the State of Maine throughout the term of the Agreement.
- 6.14 Recipient shall locate all business and manufacturing operations and supporting product development or process improvement activities resulting from the Technology funded by this Agreement in the State of Maine throughout the term of this Agreement, except as expressly detailed in the approved Application or in the Appendix E Repayment Terms, or as otherwise approved in writing by MTI, in its sole discretion.

- 6.15 Recipient shall notify MTI at least 60 days prior to any proposed sale, license, or other transfer by Recipient that would result in Recipient's non-compliance with this Section of the Agreement. Recipient's notice shall include a proposal for repayment of all Grant funds disbursed under this Agreement prior to such a sale, license or transfer event if the result of that event would be non-compliance with this Section of the Agreement.
- 6.16 Recipient may not sell all, or substantially all, of the assets, stock or other ownership interests of Recipient, or the segment of Recipient's company which is commercializing or using the Technology, without written consent of MTI (which consent MTI may decline, in its sole discretion).
- 6.17 Recipient may not license or otherwise authorize a third party to carry out the business and manufacturing operations, supporting product development, or process improvement activities resulting from the Technology funded by this Agreement during the term of the Agreement without written consent of MTI (which consent MTI may decline, in its sole discretion).
- 6.18 In the event of a termination of the Development Loan by MTI under Section 9 of this Agreement, Recipient shall repay to MTI, within 30 days of a MTI demand for payment, all Development Loan funds disbursed by MTI to Recipient plus all interest, costs, fees, expenses or damages owed by Recipient to MTI under the terms of this Agreement.

## 7.0 SUSPENSION AND TERMINATION OF DEVELOPMENT LOAN

- 7.1 MTI, in its sole discretion, may suspend or terminate the Development Loan for the following reasons:
  - a) the failure of Recipient to achieve a Project deliverable within the anticipated timeframe described in Appendix B notwithstanding Recipient's good faith and diligent implementation of the Project described in the approved Application; or
  - b) a material change in Recipient's legal status, financial status, key personnel, or compliance status with federal and state laws, a change in key personnel implementing the Project, a material change in the status of Background IP (defined in Section 5.7) and Intellectual Property rights (defined in Section 10.1) as represented in Sections 5 and 6 above notwithstanding Recipient's good faith and diligent implementation of the Project described in the approved Application.
- 7.2 If MTI elects to suspend the Development Loan, MTI immediately may withhold all undisbursed loan funds without prior notice to Recipient. MTI shall provide Recipient with written notice of MTI's decision to suspend the Development Loan and the reasons therefore promptly after the MTI suspension decision. The written notice of suspension shall describe the specific actions which Recipient must complete successfully to secure reinstatement of the Grant award, and the deadline for such remedial actions.
- 7.3 If MTI elects to terminate the Development Loan, MTI shall provide Recipient with written notice of the termination decision. MTI may elect, in its sole discretion, to offer Recipient an opportunity to cure the underlying cause of the termination. In any written notice of suspension, MTI may include termination as the remedy for Recipient failure to cure the default giving rise to Agreement suspension by MTI.
- 7.4 Upon issuance of a written notice of suspension to Recipient, MTI shall have no further obligations to the Recipient under the Agreement until Recipient cures the underlying cause of the suspension and MTI provides Recipient with written notice of reinstatement.

Upon issuance of a written notice of termination to Recipient under this Section 7, MTI shall have no further obligations to the Recipient.

- 7.5 Recipient shall have no obligation to repay the Development Loan from MTI following termination by MTI under Section 7. Recipient's covenant under Section 6.6 (Document Retention and Review) and obligation to submit at least one additional annual survey under Section 6.7 (Reporting Requirements) shall survive any such termination.

## 8.0 EVENTS OF DEFAULT BY RECIPIENT

- 8.1 A material breach of any obligation of the Recipient under the Agreement shall constitute an Event of Default, including, without limitation:

- a) the sale of all, or substantially all, of the assets, stock or other ownership interest of Recipient or a segment of Recipient's company which is commercializing or using the Technology without written consent of MTI (which consent MTI may decline, in its sole discretion);
- b) the failure of Recipient to use its best efforts to assure that all activities described in the approved Application are implemented, or to expend Development Loan funds only for the purposes and in the amounts detailed in the approved Application;
- c) the failure of Recipient to contribute and document required Matching Funds prior to deadlines set forth in Appendix B;
- d) the failure by the Recipient to provide any periodic or final report or accounting to MTI when due;
- e) the failure by the Recipient to make any required repayment to MTI when due;
- f) the failure by Recipient to notify MTI promptly of any inaccuracy of any representations or any breach of any warranties by Recipient under Section 5 Representations and Warranties;
- g) the failure by Recipient to notify MTI promptly of any information required to be reported under or any violations of Section 6 Covenants;
- h) the failure by Recipient to maintain a place of business in the State of Maine throughout the term of the Agreement without written consent of MTI (which consent MTI may decline, in its sole discretion);
- i) the failure by Recipient to locate all business and manufacturing operations, supporting product development or process improvement activities resulting from the Technology funded by this Agreement in the State of Maine throughout the term of this Agreement without written consent of MTI (which consent MTI may decline, in its sole discretion);
- j) the licensing of or authorization to a third party by Recipient to carry out the business and manufacturing operations, supporting product development, or process improvement activities resulting from the Technology funded by this Agreement during the term of the Agreement without written consent of MTI (which consent MTI may decline, in its sole discretion);
- k) the bankruptcy or insolvency of Recipient;
- l) any Event of Default identified elsewhere in the Agreement; and
- m) any default or event of default under any other document executed by Recipient in connection with this Agreement, including, without limitation, any Equipment Security Agreement or Mortgage Deed and Security Agreement.

- 8.2 The Recipient shall notify MTI promptly in writing of the specifics of any Event of Default. Any failure by the Recipient to properly provide such notice to MTI shall be considered a separate Event of Default by the Recipient.

## 9.0 TERMINATION FOR EVENT OF DEFAULT

- 9.1 MTI may terminate this Agreement upon an Event of Default by providing a thirty (30) day written notice of MTI's intent to terminate to Recipient, stating the grounds for termination. Termination shall occur if an Event of Default remains fully or partially uncured for thirty (30) days after MTI has provided the Recipient with written notice that it intends to terminate the Agreement. MTI, in its sole discretion, may extend the 30 day period for cure.
- 9.2 Upon the occurrence of any Event of Default, MTI shall have no further obligations to the Recipient under the Agreement until such Event of Default is cured. All MTI's unperformed obligations under the Agreement shall terminate upon the Termination Date.
- 9.3 Despite a termination of the Agreement pursuant to an Event of Default, Recipient's remaining unperformed obligations and liabilities to MTI under the Agreement survive, and shall not be excused, until Recipient fully repays any amounts due MTI under this Agreement.
- 9.4 Upon a termination by MTI under Section 9.1, the Recipient shall pay MTI either: (i) an amount equivalent to two times all Development Loan sums received by Recipient under this Agreement, less any prior payments by Recipient; or (ii) the full amount of Recipient's outstanding repayment obligation under the Appendix E repayment schedule, whichever is greater. Recipient shall make this payment to MTI regardless of the damages that Recipient suffers as a result of such Event of Default. This payment obligation is calculated to compensate MTI for administrative staff costs and disbursements invested by MTI in: (i) the Application review and award stage peer review and consultant expenses and due diligence reviews; (ii) documentation of the Development Loan; (iii) monitoring and enforcement of Recipient's compliance with the Development Loan; (iv) Agreement termination and payment collection; and (v) MTI's lost opportunity to invest the Development Loan funds in a Project that would both repay MTI following successful commercialization and provide new jobs and economic development through commercialization of new technology for the State of Maine. The Recipient shall make full payment of the amount due within 30 days following receipt of the written notice of default under Section 9.1. Recipient may request MTI to allow Recipient to satisfy its payment obligation with installment payments, but MTI shall have no obligation to agree to any such installment payment proposal. If MTI does agree to an installment payment proposal, MTI may, in its sole and absolute discretion, require the Recipient to provide adequate collateral to secure such payment to MTI. Interest shall accrue on all such payment obligations of the Recipient at the prime rate, as published in the Money Rates section of the *Wall Street Journal* as of the date of the written termination notice sent by MTI to Recipient, plus 2%, as calculated on the actual amount to be paid from the date of disbursement until payment.
- 9.5 Upon a termination by MTI under Section 9.1, Recipient shall pay on demand all MTI's costs, fees, expenses or damages of any kind incurred by or imposed upon MTI in connection with or as a consequence of Recipient's default under this Agreement. Without limiting the foregoing, Recipient shall pay all MTI's actual costs of collection and attempted collection, including, without limitation: (1) those expenses incurred or paid to protect, preserve, collect, lease, sell, repair, improve, advertise, locate, take



possession of, liquidate or otherwise deal with any collateral under the Equipment Security Agreement; (2) expenses of dealing with any person or entity in any bankruptcy proceeding; (3) all out-of-pocket expenses incurred for MTI's attorney and paralegal fees, disbursements, and costs, all at such rates and with respect to such services as MTI in its sole discretion may elect to pay (as such rates may vary from time to time during the course of the performance of such services) including the costs of attorneys who are employees of MTI; and (4) the costs of appraisers, engineers, investment bankers, environmental consultants and other experts that may be retained by MTI in connection with such collection efforts. Such costs will be added to the unpaid balance of the Development Loan.

## 10.0 INTELLECTUAL PROPERTY AND COMMERCIALIZATION

- 10.1 All ideas, discoveries, inventions, specifications, designs, improvements, processes, formulas, techniques, data, know-how, materials and other works conceived, developed or reduced to practice by or on behalf of Recipient in connection with implementation of the Project, including all patents, copyrights, trademarks and other intellectual property rights embodied therein or relating thereto (collectively "Intellectual Property"), shall be the property of Recipient, subject to the terms and conditions of this Agreement, including MTI's license rights granted under subsections (c) and (d) of Section 10.3 and the Development Loan repayment provisions of this Agreement.
- 10.2 The Parties acknowledge that their mutual preferred outcome is for Recipient to commercialize, or cause a third party to commercialize, the Technology and Intellectual Property created by Recipient under the Project. It is not the intent of MTI to manage the Recipient's business or Intellectual Property, unless unique circumstances arise that require MTI to advance the Technology or the Intellectual Property toward the market, either directly or through a commercialization partner. The Parties agree that MTI will assume the role of licensor under this Section only as a last resort, and only where the goal of commercialization cannot be achieved by Recipient or Recipient's agent in a timely and effective matter.
- 10.3 Recipient shall use diligent efforts, and shall cause its sublicensees to use diligent efforts, to pursue the commercialization of any Technology, or any related Intellectual Property, created by Recipient during implementation of the Project, through the development and introduction into the commercial market of Products, Services or Processes (defined in Section 11.1). Recipient recognizes that the commercialization of innovative technology is of fundamental importance to MTI and the State of Maine's economic development goal, and the prime objective of the Development Loan Program underwriting this MTI Development Loan to Recipient. Specifically, Recipient shall fulfill the following obligations to enable commercialization of Technology or any related Intellectual Property:
- a) Recipient shall notify MTI whether Recipient believes that it has created Intellectual Property under the Project, and if so, whether Recipient plans to pursue commercialization of Technology related to that Intellectual Property, within one year of the Project Completion Date established in Appendix B.
  - b) As required by Appendix D, Recipient shall provide a written report to MTI on each anniversary of the Project Completion Date on the progress of Recipient's efforts during the prior year to develop, commercialize, or license Product, Service, or Processes related to the Technology, including, without limitation, research and development efforts, efforts to obtain regulatory approval,

- marketing efforts and sales figures. The report shall also contain a discussion of intended efforts and sales projections for the coming year.
- c) In the event that Recipient voluntarily notifies MTI that Recipient is unable or unwilling to commercialize the Technology or related Intellectual Property, Recipient hereby grants to MTI, at MTI's written request, (i) an exclusive, worldwide license, with the right to sublicense, to use and commercialize the Intellectual Property, subject to commercially reasonable terms and conditions, and (ii) a nonexclusive, worldwide license, with the right to sublicense, to use and commercialize the Background IP (defined in Section 5.7), subject to third party rights and commercially reasonable terms and conditions. In those cases where Recipient has an exclusive license to use and commercialize the Background IP, MTI may require that the Recipient grant a sublicense for the entire Background IP rights held by Recipient to MTI if reasonably necessary for commercialization of the IP. In addition, MTI shall have the right, exercisable in its sole discretion, to prepare, file, prosecute and maintain all patent, copyright and trademark applications relating to the Intellectual Property.
  - d) If Recipient has not commercialized the Technology or related Intellectual Property created by Recipient during the Project within five years following the Project Completion Date, Recipient hereby grants to MTI, at MTI's written request, (i) an exclusive, worldwide license, with the right to sublicense, to use and commercialize the Intellectual Property, subject to commercially reasonable terms and conditions, and (ii) a nonexclusive, worldwide license, with the right to sublicense, to use and commercialize the Background IP, subject to third party rights and commercially reasonable terms and conditions. In addition, MTI shall have the right, exercisable in its sole discretion, to prepare, file, prosecute and maintain all patent, copyright and trademark applications relating to the Intellectual Property. In the event that Recipient demonstrates that it has used diligent efforts to commercialize the Technology and related Intellectual Property during the prior five years, and will continue to use such diligent efforts in the future, Recipient and MTI shall negotiate an extension of the MTI right to require commercialization hereunder.
  - e) Recipient, and any of its subgrantees or subcontractors, shall cooperate fully with MTI in the preparation, filing, prosecution, maintenance and enforcement of any patents, copyrights and trademarks embodied in or related to the Intellectual Property, and in the commercialization of the Intellectual Property, including, but not limited to, maintaining and making available to MTI and its authorized representatives all documents, electronic records, notes, papers, accounting records, and other evidence in its possession or under its control pertaining to the creation of the Intellectual Property and its commercialization, and executing any documents appropriate to implement commercialization.
  - f) In the event that Recipient and MTI are not able to agree upon the terms and conditions for an exclusive, worldwide license to MTI under the provisions of this section, the Parties agree to the following dispute resolution mechanisms:
    - i) Negotiation. MTI and Recipient shall attempt in good faith to resolve the matter within ten days after MTI's request for license rights to commercialize the Technology and related Intellectual Property under this section.
    - ii) Mediation. In the event that the Parties cannot agree within ten days following MTI's request for license rights under this section, either Party

may initiate mediation by written notice to the other Party, whereupon both Parties shall be obligated to engage in a confidential mediation proceeding under the then-current CPR International Institute for Conflict Prevention and Resolution (“CPR”) Model Procedure for Mediation of Business Disputes, except that the specific provisions of this section override any inconsistent provisions of the CPR Model Procedure. The mediator will be selected from the CPR Panels of Neutrals. If the Parties cannot agree upon the selection of a mediator within ninety days after the Notice Date, then upon the request of either Party, the CPR shall appoint the mediator. The Parties shall attempt to resolve the dispute through mediation until one of the following occurs: (a) the Parties reach a written settlement; (b) the mediator notifies the Parties in writing that they have reached an impasse; (c) the Parties agree in writing that they have reached an impasse; or (d) the Parties have not reached a settlement within one hundred and twenty days after the Notice Date.

- iii) Trial Without Jury. If the Parties fail to resolve the dispute through mediation, or if neither Party elects to initiate mediation, each Party shall have the right to pursue any other remedies legally available to resolve the dispute, provided, however, that the Parties expressly waive the right to a jury trial in the legal proceeding under this Section.

## 11.0 REPAYMENT TO MTI

- 11.1 The Recipient shall notify MTI promptly following the successful commercialization of any product (“Product”), service (“Service”) or process (“Process”) related to the Technology or Intellectual Property created by Recipient during the Project. This notification obligation shall continue for a period of five years following the completion of the Project set forth in Appendix B. Successful commercialization includes the introduction of any Product, Service or Process related to the Project into the commercial market either directly by Recipient or through licensing of Intellectual Property. Development of a Product, Service or Process used exclusively by Recipient within Recipient’s business or affiliated companies (collectively referred to as “Business Process”) shall be considered introduction into the commercial market for purposes of this Agreement.
- 11.2 If Recipient successfully commercializes, or causes a third party to commercialize a Product, Service or Process, Recipient shall repay MTI according to the schedule set forth in Appendix E.
- 11.3 If Recipient and MTI agree that no Product, Service or Process can be commercialized from the Technology or related Intellectual Property developed by Recipient under the Project, no repayment of the Development Loan shall be required.
- 11.4 If Recipient successfully commercializes a Product, Service or Process from the Technology or related Intellectual Property developed by Recipient under the Project, and fails to notify MTI, or if Recipient licenses, sells, donates, or otherwise transfers the rights to commercialize or manufacture the Product, Service or Process to any individual or company and fails to notify MTI of such transfer, Recipient shall pay MTI an amount equivalent to two times the Development Loan funds received by the Recipient under this Agreement within 30 days of the transfer. This payment amount is based upon the same factors described in Section 9.4 above.

- 11.5 Recipient shall cooperate fully with MTI and its authorized representatives in maintaining and making available for audit all documents, electronic records, and financial records pertaining to commercialization, transfer of rights or monies due to MTI under this Section.
- 11.6 In the event that an MTI audit reveals an underpayment of amounts due under this Section, Recipient shall immediately pay the amounts due to MTI and interest calculated in accordance with Section 14.0 of this Agreement. If the audit reveals any overpayment of amounts, MTI will apply the amount to future payment obligations of Recipient. All audits shall be at MTI expense, unless the audit reveals underpayment of royalties by the Recipient in excess of two (2) percent of the total Development Loan Agreement amount, in which case the audit expenses shall be borne by Recipient.
- 11.7 In the event of an Event of Default under this Agreement, Recipient shall have the obligation to repay MTI for all amounts due under this Agreement. All such amounts shall, once demanded by MTI, accrue interest at the rate set forth in Section 14.2 of this Agreement until paid in full.

## 12.0 INDEMNIFICATION

- 12.1 Recipient agrees to indemnify, defend, save and hold harmless MTI and its Officers, Directors, employees, agents and representatives, at Recipient's cost and expense, from and against any and all actual and alleged demands, claims, lawsuits, obligations, liabilities, losses, fees, costs, expenses and damages, including without limitation those listed in Section 9.5 of this Agreement, incurred or imposed upon MTI in connection with or as a consequence of any claims (including but not limited to third party claims), suits, actions, demands, or judgments arising out of or resulting from:
- a) any actions or omissions of the Recipient, its officers, directors, employees, representatives, independent contractors, subcontractors, licensees or consultants;
  - b) Recipient's performance or non-performance of its obligations under the Agreement;
  - c) the use by Recipient of the Technology, or any related Product, Service, Process or Intellectual Property that is the subject of this Agreement;
  - d) the infringement of any patent, copyright or other form of intellectual property right owned by another person through any manufacture, use, sale, disclosure or reproduction involving the Technology, or
  - e) any licensing or sublicensing of the Intellectual Property.

## 13.0 PUBLIC ACKNOWLEDGEMENT OF MTI SUPPORT

- 13.1 Recipient's press releases and other public descriptions or discussion of the Technology will acknowledge MTI's participation in and support of the development and commercialization of the Technology.

## 14.0 MISCELLANEOUS

- 14.1 This Agreement shall be construed in accordance with the laws of the State of Maine without regard to its conflict of laws, provisions, except that questions affecting the

validity, construction and effect of any patent shall be determined by the laws of the country in which the patent was granted.

- 14.2 Any unpaid amounts due hereunder shall bear interest at the prime rate, as published in the Money Rates section of the *Wall Street Journal* as of the date the amount became due hereunder, plus 2%, until paid. This provision does not excuse any failure to pay and does not limit any remedies for breach. In the event of Recipient's breach of this Agreement, Recipient shall pay to MTI all costs, including mandated court costs, of enforcing this Agreement.
- 14.3 Any notice required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by certified or registered mail, postage prepaid as follows:

If to \_\_\_\_\_ Recipient:

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

If to Maine Technology Institute:

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

- 14.4 The Parties hereto acknowledge that this Agreement sets forth the entire agreement of the Parties as to the subject matter hereof and shall not be modified except by the execution of a written instrument signed by the Parties.
- 14.5 The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling and applicable body of law, such invalidity or unenforceability shall not in any way affect the validity of the enforceability of the remaining provisions hereof.
- 14.6 This Agreement is not assignable to any other party, without the express written consent of the other Parties to this Agreement.
- 14.7 MTI does not make any representations as to the patentability or protectability, validity, enforceability, freedom from infringement of the rights of others, likelihood of successfully converting the Technology into commercial Products, Services, or Processes, or whether the Technology is satisfactory for the purposes intended.

Appendix A	Research Agreement
Appendix B	Project Payment Schedule and Deliverables
Appendix C	Intellectual Property List
Appendix D	Reporting Requirements
Appendix E	Repayment Terms

ACCEPTED AND AGREED TO:  
MAINE TECHNOLOGY INSTITUTE

By: \_\_\_\_\_  
Name: Betsy Biemann  
Title: President  
Date: \_\_\_\_\_

\_\_\_\_\_ (RECIPIENT)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_