

**AGREEMENT OF MAINE TECHNOLOGY INSTITUTE
AND
NAME OF COMPANY**

**PHASE 0 KICKSTARTER AGREEMENT
(PZXXXX)**

This KickStarter Agreement (“Agreement”) is made as of _____ (“Effective Date”) by and between the Maine Technology Institute (“MTI”), a Maine non-profit corporation located at 8 Venture Avenue, Brunswick Landing, Brunswick, Maine 04011, and _____, a (corporation, partnership, sole proprietorship, limited liability company or other entity) organized under the laws of the State of _____, federal tax identification or social security number _____ (“Recipient” or “Company”), with a place of business at _____ collectively referred to in this Agreement as the Parties (“the 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 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 MTI’s Phase 0 KickStarter Program (“KickStarter”) provides funding for Maine-based entrepreneurs, businesses, research institutions, and research universities to submit applications for Federal SBIR/STTR Phase I or BAA funding leading to successful commercialization of new and innovative products, processes, or services in the State’s seven targeted technology sectors.
- 1.3 Recipient has submitted a KickStarter application to MTI attached as Appendix A (“Application”), including a proposed budget attached as Appendix A Form B (“Budget”).
- 1.4 Recipient will undertake the activities described in the Application (“Project”).
- 1.5 MTI, in reliance upon the Recipient’s representations contained in the Application and in this Agreement, awards the KickStarter to Recipient in order to promote these mutual interests.

2.0 CONSIDERATION

- 2.1 For adequate 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 AWARD


- 3.1 Relying upon Recipient's representations in its Application and Recipient's compliance with all terms and conditions of this Agreement, MTI will provide a KickStarter award of up to \$_____ to the Recipient to complete the Project. 
- 3.2 The KickStarter funds shall be disbursed to the Recipient by MTI in accordance with the payment schedule and Project Completion Date set forth in Appendix B hereto, subject to Recipient's full and timely compliance with the terms and conditions of this Agreement.
- 3.3 MTI shall not disburse any KickStarter funds following written notice by MTI to Recipient of Suspension or Termination of KickStarter under Section 7.

4.0 TERM OF AGREEMENT

- 4.1 The term of the Agreement shall commence on the Effective Date and shall terminate on the Termination Date ("Termination Date"), which is the date two years following the Project Completion Date. The Project Completion Date is the date selected by Recipient for completion of the Project in the Application, except when MTI establishes a revised Project Completion Date in a written notice to Recipient, in which case that revised date shall be considered the Project Completion Date.
- 4.2 The Termination Date may be accelerated by MTI or Recipient pursuant to the provisions of Section 7.

5.0 REPRESENTATIONS OF RECIPIENT

Recipient makes the following representations to MTI, which MTI has relied upon in entering into the KickStarter Agreement:

- 5.1 The Recipient has the authority to execute and deliver this Agreement and any other documents, certificates or agreements required by MTI to be executed in connection with this Agreement, without limitation, and to execute the transactions contemplated thereby.
- 5.2 The Recipient is a (corporation, partnership, sole proprietorship, limited liability company or other entity) in good standing to do business under the laws of the State of Maine, and has authority to 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 Phase 0 KickStarter 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 the 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 disclosed any relationship, direct or indirect, between Recipient, its Officers, Directors, members or employees, and MTI, and is in compliance with the conflict of interest provisions of 5 M.R.S.A. Chapter 407, Section 15307.

6.0 ADDITIONAL COVENANTS

- 6.1 Recipient shall use its best efforts to assure that all activities described in the approved Application are implemented, including, but not limited to timely submittal of the SBIR/STTR Phase I or BAA funding proposal described in the Project, and shall expend KickStarter funds only for the purposes and in the amounts detailed in the approved Application, or by written approval of 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 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 Project work described in the Application prior to the Appendix B Project Completion Date.
- 6.6 Recipient shall submit a final report to MTI containing the information required by Appendix C. Recipient shall complete a minimum of two annual surveys conducted by MTI after Project Completion Date and also shall respond promptly to any other MTI survey or other information requests until the Termination Date of this Agreement.
- 6.7 Recipient shall maintain all records needed to document the financial and other information to be reported to MTI pursuant to this Agreement, and shall provide any additional records reasonably requested by MTI until the Termination Date of this Agreement.
- 6.8 Recipient will maintain a place of business, as well as good standing to do business, in the State of Maine throughout the term of this Agreement.
- 6.9 Recipient shall locate all business and manufacturing operations and supporting product development or process improvement activities resulting from any product, service or process funded by this Agreement in the State of Maine throughout the term of this Agreement, except as Recipient has expressly identified in the Application, or otherwise approved in writing by MTI, in its sole discretion.
- 6.10 Recipient shall notify MTI if Recipient commercializes and derives revenue from any product, service or process funded by this Agreement.
- 6.11 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 Sections 6.8 or 6.9 of this Agreement. Recipient's notice shall include a proposal for repayment of all KickStarter 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 Sections [6.8] and [6.9] of this Agreement.
- 6.12 In the event of a termination of the KickStarter by MTI under Section 7 of this Agreement, Recipient shall repay to MTI, within 30 days of a MTI demand for payment, all KickStarter funds disbursed by MTI to Recipient plus interest as described in Section 7, as well as any additional costs, fees, expenses or damages due to MTI under Section 7.

7.0 SUSPENSION OR TERMINATION OF KICKSTARTER FOR PROJECT FAILURE:
KICKSTARTER REPAYMENT

7.1 MTI, in its sole discretion, may suspend or terminate the KickStarter upon the occurrence of any Recipient breach of any term or condition of the Agreement, including, but not limited to, the following events of default:

- a) The failure of Recipient to complete the Project within the anticipated timeframe described in Appendix B;
- b) The failure by Recipient to maintain a place of business, as well as good standing to do business, in the State of Maine throughout the term of this Agreement;
- c) The failure by Recipient to locate all business and manufacturing operations and supporting product development or process improvement activities resulting from any product, service or process funded by this Agreement in the State of Maine throughout the term of this Agreement, except as otherwise expressly agreed in writing by MTI;
- d) Material change in Recipient's legal status, financial status, key personnel, or compliance status with federal and state laws, or a material change in the Project that would have a significant adverse effect on Recipient's ability to implement the Project as described in the Application; or
- e) Recipient's expenditure of KickStarter funds for purposes that are not detailed in the Application or by written approval of MTI.

7.2 In the event of Recipient default, MTI, in its sole discretion, may elect to suspend or terminate the KickStarter.

a) If MTI elects to suspend the KickStarter, MTI immediately may withhold all undisbursed KickStarter funds pending reinstatement of the KickStarter without prior notice to Recipient. MTI shall provide Recipient with written notice of MTI's decision to suspend the KickStarter 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 KickStarter award, and the deadline for such remedial actions, including, but not limited to immediate termination at the conclusion of the cure period. .

b) If MTI elects to terminate the KickStarter, MTI shall provide Recipient with written notice of the termination decision.

7.3 In the event of MTI suspension or termination of the KickStarter, MTI, in its sole discretion, may elect to require Recipient to repay some or all of the funds disbursed by MTI under this Agreement by sending a written notice to Recipient demanding repayment. All such amounts, once demanded by MTI, shall accrue interest at the annual rate of the prime rate as published in the Wall Street Journal plus 2% until paid.

7.4 In the event of MTI suspension or termination of the KickStarter, 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 breach of this Agreement. Without limiting the foregoing, Recipient shall pay all MTI's actual costs of collection and attempted collection, including, without limitation: (1) expenses of dealing with any person or entity in any bankruptcy proceeding; (2) 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 (3) 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 MTI KickStarter Agreement.

8.0 LIABILITY/INDEMNITY

- 8.1 Neither this Agreement, nor any act 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.
- 8.2 Recipient agrees to indemnify, defend and hold harmless MTI, its Officers, Directors and employees, at Recipient's cost and expense, from and against any and all losses, costs, liabilities, costs, fees, expenses and damages including, without limitation, those listed in Section 7.4 of this Agreement, incurred by 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 any breach of Recipient's obligations under this Agreement, or any unlawful act or omission by Recipients, its Officers, Directors, Shareholders, members, affiliates, representatives or employees.

9.0 PUBLIC ACKNOWLEDGEMENT OF MTI SUPPORT

- 9.1 Recipient's press releases and other public descriptions or discussion of this Project will acknowledge MTI's participation and support.
- 9.2 Recipient shall use its best efforts to cooperate with MTI in publicizing the Project and its benefits for the people of Maine.

10.0 MISCELLANEOUS

- 10.1 This Agreement shall be construed in accordance with the laws of the State of Maine without reference to conflict of law provisions.
- 10.2 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:

If to:
Maine Technology Institute
8 Venture Avenue
Brunswick Landing
Brunswick, ME 04011



- 10.3 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.
- 10.4 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.
- 10.5 Recipient may not assign this Agreement to any other party, without the express prior written consent of MTI.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as an instrument under seal as of the Effective Date of the Agreement.

Agreement Appendices:

Appendix A. Phase 0 KickStarter Application including Form B – Project Budget

Appendix B. Project Completion Date and Award Schedule

Appendix C. Final Report Form and Certification

Additional Appendices

ACCEPTED AND AGREED TO:

NAME OF COMPANY

Recipient Signature

Title

Printed Name

Date

MAINE TECHNOLOGY INSTITUTE

MTI Signature

Date

Brian Whitney,
President

APPENDIX C: FINAL REPORT FORM AND CERTIFICATION

The Recipient agrees to submit a Final Report which includes the following:

1. A signed copy of this Appendix C
2. A copy of the SBIR/STTR Phase I or BAA proposal
3. Proposal verification receipt from Agency
4. Appendix C Spreadsheet: Summary of Expenses – Compare actual expenses to the approved budget. Form available on the MTI website.
5. Supporting Documents – Provide a log of hours for applicant personnel and all external resources.
6. Additional information specific to the approved project required by MTI to include:

By signing this form, I certify that, to the best of my knowledge that: (1) activities were conducted as described in the Application (Appendix A) and Budget Summary (Appendix A – Form B), unless otherwise indicated in writing, and summarized in the above Narrative; (2) all expenses incurred as part of the Project have been documented as required by MTI, and any significant variances to the proposed budget have been reported and documented as required by MTI; and (3) the Company shall maintain all financial and technical documents pertaining to this KickStarter and this Final Report until the Agreement Termination Date.

Check here if you are considering applying for an MTI TechStart Grant, Seed Grant, or Development Loan.

Recipient Signature

Title

Printed Name

Date

