

REIMBURSABLE GRANT AGREEMENT

THIS REIMBURSABLE GRANT AGREEMENT (“Agreement”) is entered into this _____ day of _____, 202█ (“Effective Date”), by and between the **Maryland Technology Development Corporation** (“Grantor”), a body politic and corporate and a public instrumentality of the State of Maryland, acting by and through its Maryland Innovation Initiative Program (the “Program”), and _____, a **<State> <form of business organization>** (“Grantee”).

RECITALS

A. The Grantor has the authority to make grants to foster the commercialization potential of the results of research and development conducted by colleges and universities deemed “Qualifying Universities” under the Program’s enabling legislation.

B. Grant proceeds under Phase III of the Program shall be used to defray the costs incurred by a start-up company collaborating with a Qualifying University for product development that advances a technology towards a commercial launch or positions the company for investment

C. Grantee has applied to Grantor for grant assistance to undertake activities which are consistent with the aforementioned goals. Grantor, in reliance upon the representations contained in Grantee’s **<application> <transition request>** attached hereto and incorporated herein as Exhibit A, has approved an award of grant funds to be expended by Grantee in accordance with the provisions of this Agreement.

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide the Grantee with funds which will enable the Grantee to carry out the project described in Exhibit A (the “Project”).

2. **Grant.** In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, Grantor agrees to provide Grantee with funds in an amount not to exceed _____ Thousand and 00/100 Dollars (\$_____) (the “Grant”) on such further terms and conditions as are described in this Agreement. Grantee shall accept and use the Grant only for costs incurred in carrying out the Project as described in, and pursuant to the budget contained in, Exhibit A, which costs shall constitute “Eligible Expenses”. The Grant is subject to the availability of funds for such purpose, as determined by Grantor in its sole discretion, and to Grantee’s compliance with this Agreement.

3. **Disbursement of Grant Funds.**

(a) Grantor will disburse Grant funds as follows: (i) following the execution of this Agreement, a sum equal to 25% of the Grant (“Initial Disbursement”); (ii) following Grantor’s receipt and acceptance of the Mid-term Report (as defined in Section 4(d)), a sum

equal to 50% of the Grant (“Mid-term Disbursement”); and (iii) following Grantor’s receipt and acceptance of the Final Report (as defined in Section 4(e)), a sum equal to the lesser of the total amount of Eligible Expenses accounted for in the Final Report, less the Initial Disbursement and the Mid-term Disbursement, or the balance of the Grant. Disbursements shall be requested in the format set forth in Exhibit B, attached hereto.

(b) The Grantor reserves the right not to disburse all or any portion of the Grant if in the Grantor’s sole discretion Grantee is in default under this Agreement.

4. **Records and Reports.**

(a) The Grantor shall monitor Grant activities and compliance with the terms and conditions of this Agreement. It shall receive and review Grant reports, acceptance of which shall not be unreasonably withheld. Notwithstanding the foregoing, the Grantor may, in its sole discretion, decline to accept any Grant report which does not demonstrate satisfactory progress towards completion of the Project or its milestones.

(b) Grantee shall maintain accurate financial records, in a form acceptable to Grantor, of all transactions relating to the receipt and expenditure of the Grant.

(c) Grantee shall allow any auditors of the Grantor or legislative auditors of the Maryland General Assembly to inspect and audit, at reasonable times, all records and documents relating to this Grant, which records shall be retained for at least three years after the termination of this Agreement.

(d) At the midpoint of the Project as described in Exhibit A, Grantee shall submit to Grantor a report detailing the Project activities and results to date, the progress toward meeting mid-term milestones, and an accounting of all Project expenditures incurred to date (the “Mid-term Report”).

(e) Within 30 days after Project completion, Grantee shall submit to Grantor a Final Report which shall include an overview of all activities undertaken during the Project, a detail description of the results of the Project and the success in achieving the milestones listed in Exhibit A, an accounting of all Project expenditures incurred, and any suggestions for ways in which to improve the Program (the “Final Report”).

(f) Beginning three (3) months after completion of the Project and continuing quarterly thereafter so long as Grantee owes Grantor any reimbursement duties pursuant to Section 8 of this Agreement, Grantee shall forward its internally prepared financial statement for the previous quarter (“Quarterly Financial Report”) to Grantor. Quarterly Financial Reports shall be signed by the Company’s Chief Executive Officer (“CEO”) who shall verify under oath that they are true and accurate and fairly present the financial condition and results of operations of the Company, to the best of the CEO’s knowledge, information and belief, and shall include the following: (i) a balance sheet and income statement; (ii) an employee census reflecting total payroll and its current number of full-time equivalent employees who are Maryland residents; (iii) detailed information describing any follow-on funding, including but not limited to grants,

debt financing or equity financing, received by Grantee since the last Quarterly Financial Report; and (iv) such additional information as TEDCO may reasonably request.

(g) Beginning one year after Project completion and continuing for ten (10) years following the effective date of the agreement documenting the last Phase of the Project first funded under the Program, Grantee shall submit to Grantor an annual report detailing the amount, source and purpose of any revenue received in connection with any technology and associated intellectual property developed or improved through Project activities (the “Grant Technology”), and the progress taken towards commercialization of the Grant Technology (the “Annual Reports”). Each Annual Report shall contain a narrative summary of all progress towards commercializing the Grant Technology, and shall be accompanied by a summary sheet which identifies: (i) all licensing agreements, option agreements and any other instruments that transfer any interest or rights in the Grant Technology; (ii) the effective date of each such agreement; (iii) the parties to each such agreement; and (iv) the Grant Technology involved. Grantee shall promptly provide for review copies of any such agreements requested by the Grantor, which copies shall be returned to Grantee promptly following review and, while in the possession of Grantor, be held subject to the provisions of Section 4(g).

(h) Grantee will identify to Grantor any parts of Exhibit A or the reports required by this Agreement which are alleged to contain confidential or proprietary information of a Grantee or any other person (“Identified Confidential Information”). To the extent reasonably permitted by Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland, Grantor agrees to hold such Identified Confidential Information in confidence for five (5) years from the date of its disclosure to Grantor, except that any licensing agreement between a Grantee and a third-party which is provided to Grantor, or any Annual Report describing the terms thereof, shall be held in confidence for the longer of five (5) years from the date of its disclosure to Grantor or the remaining term of the license. Notwithstanding the foregoing, Grantor shall not be obligated to maintain in confidence any information: (i) which was already known to Grantor; or (ii) which is or comes into the public domain through no fault of Grantor; or (iii) which is independently developed by Grantor; or (iv) which comes to Grantor from a third party which is not in violation of any obligation of confidentiality to a Grantee or Grantor.

5. **Expenditure of Grant Funds.** All expenses to be financed with the Grant funds shall be incurred on or before nine (9) months after the Effective Date, unless a written waiver is requested and approved by Grantor on or before this date. Grantee shall expend all Grant funds in accordance with the budget contained in Exhibit A.

6. **Compliance with Applicable Law.**

(a) Grantee agrees to comply with all applicable federal, State, and local law.

(b) Grantee certifies that it prohibits, and covenants that it shall continue to prohibit, discrimination on the basis of: (i) political or religious opinion or affiliation, marital status, race, color, creed, or national origin; or (ii) sex or age, except when age or sex constitutes

a bona fide occupational qualification; or (iii) the physical or mental disability of a qualified individual with a disability.

7. **Grantee's Certifications.** Grantee hereby certifies to Grantor that:

(a) Any resolution or other action which may be required to authorize the execution and delivery of this Agreement by Grantee in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of Grantee has been properly taken;

(b) The representations, statements, certifications and other matters contained in the proposal are and remain true and complete in all material respects; and

(c) It is not in arrears with respect to the payment of any moneys due and owing the state of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so during the term of this Agreement.

8. **Reimbursement to Program.** Grantee shall reimburse Grantor for the benefit of the Program as follows:

(a) For purposes of this Agreement, the term "Quarterly Revenues" shall have the following meaning: "Quarterly Revenues" shall mean the Grantee's gross sales or service revenues for each quarter excluding revenues which, in the sole determination of Grantor, are from activities related to sponsored research or development not resulting in the sale or delivery of a product or service in what would be Grantee's commercial business activities. Examples of such exclusions include, but are not limited to, MIPS investments, SBIR grants, CRADA agreements, research and development grants from public or private agencies or foundations, or fees for services rendered directly in connection with corporate sponsored research and development contracts covering specific activities.

(b) Beginning three (3) months after Project completion (the "First Payment Date"), and continuing quarterly thereafter until ten (10) years after the First Payment Date, Grantee shall, contemporaneously with the filing of its Quarterly Financial Reports pursuant to Section 4(f) above, tender a payment to Grantor (the "Quarterly Revenue Payment") in an amount equal to three percent (3%) of the Grantee's Quarterly Revenues for the quarter immediately preceding the payment date (i.e. Revenue Payment = 3% x Quarterly Revenues for preceding quarter), and subject to the following:

- (i) The maximum amount of any Quarterly Revenue Payment shall not exceed a sum equal to forty per cent (40%) of the Grant;
- (ii) The total amount of all Quarterly Revenue Payments in a calendar year shall not exceed a sum equal to forty per cent (40%) of the Grant; and

- (iii) The total amount of all Quarterly Revenue Payments shall not exceed a sum equal to two hundred per cent (200%) of the Grant.

9. **Default and Remedies.**

(a) A default shall consist of: (i) any use of Grant funds for any purpose other than as authorized by this Agreement; or (ii) any breach of any covenant, agreement, provision, representation or warranty of Grantee which was made in this Agreement, including a failure to file an Annual Report in accordance with Section 4(f).

(b) Upon the occurrence of any default, the Grantor may immediately suspend Grantee's authority to receive any Grant funds at any time by notice to Grantee.

(c) If a default occurs, Grantor shall provide written notice of default to and Grantee shall have 60 days from the date Grantor's notice was postmarked to cure the default.

(d) In the event of termination for default:

(i) Grantee's authority to request a disbursement shall cease, Grantee shall have no right, title or interest in or to any of the Grant funds not disbursed, and Grantor may immediately demand repayment of all or a portion of the Grant funds which have been disbursed;

(ii) Grantor's remedies described above may be exercised contemporaneously with each other and with remedies pursuant to Section 9(e) below, and all of such rights shall survive the termination of this Agreement.

(e) If a default occurs, Grantor may at any time proceed to protect and enforce all rights available to Grantor, by suit in equity, action at law, or by any other appropriate proceedings, which rights and remedies shall survive the termination of this Agreement.

10. **Indemnification.** (a) Grantee releases the Grantor from, agrees that Grantor shall not have any liability for, and shall to protect, indemnify and save harmless Grantor from and against any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, Grantor as a result of or in connection with the Grant. Notwithstanding the foregoing, Grantee will not be required to defend or indemnify Grantor with respect to losses or expenses caused by Grantor's own negligence or willful misconduct.

(a) If a Grantee is a public institution of higher education of the State of Maryland: (i) that Grantee's liability under subparagraph (a) above shall be limited to the extent of appropriations to the institution for that purpose made prior to the date of the event giving rise to a claim under subparagraph (a); (ii) that Grantee is not responsible for the cost of, but shall cooperate with, the defense of any action against Grantor; and (iii) the limits of liability under the Maryland State Tort Claims Act are not waived by this Agreement.

11. **Press Releases and Promotional Materials.** Grantor may issue press releases or other promotional materials describing in general terms the award of Grant funds and the specific purposes for which the Grant funds were awarded. Grantee shall appropriately identify Grantor as a funding source on all materials that are distributed to the public in conjunction with this Project including brochures, reports, website pages, newsletters, press releases, events, meeting notices, etc. Grantee shall also provide Grantor with copies of all publications produced in conjunction with the Project.

12. **Assignment.**

(a) Grantor has the right to assign any or all of its rights and/or delegate any or all of its duties under this Agreement. No right, benefit or advantage inuring to Grantee under this Agreement may be assigned and no duty imposed on Grantee hereunder may be delegated without the prior written approval of Grantor.

(b) In the event that a Grantee chooses to assign its rights in the Grant Technology, any such assignment shall be void unless the assignee accepts a delegation of the duties contained in this Agreement.

13. **Amendment.** This Agreement, or any part, may be amended from time to time only in writing executed by the parties.

14. **Entire Agreement.** This Agreement, and any exhibits incorporated herein, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral or written agreements between the parties hereto with respect to the Grant.

15. **Effective Date.** This Agreement shall be accepted and executed by Grantee and forwarded to Grantor for final execution. The effective date of this Agreement shall be the date Grantor enters on the face of this Agreement. This Agreement shall be in effect from the date of execution and until all Grantee's obligations under the Agreement have been satisfied, including but not limited to the reporting provisions of Section 4 and the reimbursement provisions of Section 8.

AS WITNESS, the hands of the parties hereto as of the day and year first above written.

WITNESS:

GRANTEE

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

WITNESS:

**MARYLAND TECHNOLOGY
DEVELOPMENT CORPORATION**

Name: _____
Title: _____

By: _____
Troy A. LeMaile-Stovall
Executive Director & Chief
Executive Officer

Approved for form and legal sufficiency:

Ira Schwartz, Esq., TEDCO Gen'l. Counsel
Office of the Attorney General

Attachments: Exhibit A- <Application> <Transition Request>
Exhibit B- Disbursement Request Form

Exhibit A – <Application> <Transition Request>

Exhibit B
Request for Disbursement

Name and Address of Grantee: _____

Person or Department to whose attention disbursement should be directed:

Grantee's Federal Taxpayer Identification Number: _____

Amount of Requested Disbursement: \$ _____

Date: _____

Signature of Grantee's Authorized Representative:

Printed Name: _____

Title: _____