

**THE TECHNOLOGY COLLABORATIVE  
TECHNOLOGY COMMERCIALIZATION AGREEMENT**

This Technology Commercialization Agreement ("Agreement") is made effective as of June 1, 2010 ("Effective Date"), between **The Robotics Foundry and Digital Greenhouse, Inc., d/b/a The Technology Collaborative, f/k/a The Pittsburgh Digital Greenhouse** ("TTC"), with offices at 2000 Technology Drive, Suite 102, Pittsburgh, Pennsylvania, 15219-3110, and **NewCo** ("Researcher"), with offices at \_\_\_\_\_.

**1. Definitions.**

**1.1 "Affiliate"** shall mean an entity that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another entity, and "control" shall mean ownership of more than 50% of the voting stock or interest of an entity.

**1.2 "Confidential Information"** shall mean confidential or other proprietary information that is disclosed to a party (the "Receiving Party") under this Agreement, including, without limitation, designs, drawings, models, prototypes, software designs and code, product specifications and documentation, business and product plans, and other confidential business information (the "Disclosing Party"), provided that such information is: (a) marked as confidential at the time of disclosure; or (b) if disclosed orally or otherwise than in tangible form, identified as confidential at the time of disclosure and a written summary declaring the information as confidential is provided to the Receiving Party within twenty (20) days thereafter. For purposes of this Agreement, information disclosed by a member of TTC shall be deemed to be the Confidential Information of TTC. Confidential Information shall not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the Receiving Party; (ii) is independently developed by Receiving Party without use of, or reference to, Confidential Information; (iii) is already known to Receiving Party at the time of disclosure under this Agreement without restriction of confidentiality; or (iv) is disclosed to Receiving Party by a third party who is entitled to disclose it without restriction of confidentiality.

**1.3 "Deliverable(s)"** shall mean the design(s), product(s) and/or other materials to be delivered by Researcher to TTC under the terms of a Statement of Work.

**1.4 "Derivative Works"** shall mean a work that is based on one or more preexisting work(s) and which, if prepared without authorization of the owner of the preexisting work(s), would constitute an infringement of the Intellectual Property Rights of such owner.

**1.5 "Intellectual Property Rights"** shall mean all forms of legal rights and protections in any country of the world, including all right, title and interest arising under common and statutory law to all: (i) letters patents, provisional patents, design patents, PCT filings and other rights to inventions or designs; (ii) trade secret and equivalent rights in confidential or proprietary information and know-how; (iii) copyrights, mask works, moral rights or other literary property or authors' rights; (iv) rights regarding trade names, logos, domain names, URLs, trademarks, service marks and other proprietary indicia or addresses and all goodwill associated therewith; (v) any similar, corresponding or equivalent rights relating to intangible intellectual property; and (vi) all applications, registrations, issuances, divisions, continuations, renewals, reissuances and extensions of the foregoing.

**1.6 "Researcher Background Technology"** shall mean the designs, drawings, models, prototypes, information, processes, procedures, methodology, techniques, tools, modules and routines of software code and technology proprietary to Researcher that Researcher obtains or creates prior to, or

outside of, its performance of its services under this Agreement and is identified as Researcher Background Technology on the applicable Statement of Work.

**1.7 "Services"** shall mean the research services to be provided by Researcher to TTC under the terms of a Statement of Work.

**1.8 "Statement of Work"** shall mean an order in the form of the attached Exhibit A for individual engagements for Deliverables and/or Services under this Agreement.

## **2. Services.**

**2.1 General.** Subject to the terms and conditions of this Agreement, Researcher shall provide to TTC the Services and Deliverables set forth in the applicable Statement of Work. All work performed by Researcher shall be documented in a Statement of Work signed by authorized representatives of both parties. Each Statement of Work shall set forth, at a minimum, the work to be done and the fees for the work to be performed. If any of the terms of the Statement of Work conflict with the terms of this Agreement, the terms of the Statement of Work shall take precedence for purposes of the work described therein.

**2.2 Statement of Work Changes.** TTC may modify the Services, Deliverables and delivery schedule in any Statement of Work at any time by providing Researcher with at least thirty (30) days' prior written notice, provided that if such changes would materially change the cost, duties or obligations to or of Researcher of providing the Services or Deliverables, Researcher shall propose changes to the fees and schedules and the modifications to the Statement of Work shall be implemented only upon the mutual written agreement of the parties.

**2.3 Method of Performing Services.** Researcher, in conjunction with its personnel, will determine the method, details, and means of performing the research to be carried out for TTC. TTC shall not control the manner or determine the method of accomplishing such research. TTC shall, however, be entitled to exercise a broad general power of supervision over the results of work performed by Researcher to ensure satisfactory performance. This power of supervision shall include the right to inspect, stop work, make suggestions or recommendations as to the details of the work, and request modifications to the scope of the Statement of Work.

**2.4 Prime Contact.** Each party will designate the person set forth on the applicable Statement of Work as the prime contact ("Prime Contact") responsible for work performed under the Statement of Work. Either party may change the Prime Contact at any time upon thirty (30) days' prior written notice to the other party.

**2.5 Non-Exclusivity.** Nothing in this Agreement shall be construed or interpreted so as to prohibit TTC from entering into similar agreements with other parties concerning similar Deliverables or Services.

## **3. Compensation.**

**3.1 Fees.** In consideration of the Services and Deliverables to be provided by Researcher under this Agreement, TTC shall pay to Researcher the fees set forth in the applicable Statement of Work.

**3.2 Invoices.** Unless otherwise set forth in a Statement of Work, Researcher shall submit invoices to TTC monthly for Services and/or Deliverables furnished hereunder. Each invoice will provide a breakdown and distribution of charges for Services and/or Deliverables, and an itemization of

any expense items specifically permitted under the Statement of Work. TTC shall pay each undisputed invoice within forty-five (45) days after receipt.

**3.3 Expenses.** Except as otherwise agreed to in this Agreement or the applicable Statement of Work, Researcher shall be responsible for all costs and expenses incident to its performance under this Agreement.

**3.4 Records and Inspection.** The funds provided by TTC to Researcher hereunder shall be used by Researcher exclusively to provide the Services and Deliverables in accordance with the terms and conditions of this Agreement. Researcher shall, upon the reasonable request of TTC, provide TTC with reports describing in detail the use of such funds. Such reports shall be in a form reasonably acceptable to TTC, and shall include, without limitation, a detailed accounting of expenses actually incurred, and hours actually worked, by Researcher in connection with each Statement of Work. Researcher shall maintain, during and after the term of this Agreement, receipts and other records reasonably necessary to support such reports and the use of such funds, and TTC shall have the right, during such period and at TTC's expense, to inspect, or to cause to be inspected by TTC's employees, agents or representatives, such records at any time, and from time to time, during normal business hours, upon reasonable notice. Researcher agrees to cooperate fully with TTC and its employees, agents and representatives with respect to each such inspection.

**3.5 Reimbursement.** Researcher shall reimburse TTC a sum of money equivalent to the amount of any expenditures disallowed should the TTC, the Commonwealth of Pennsylvania or any of its agencies rule through audit exception, or some other appropriate means, that expenditures from funds allocated to Researcher for direct and/or indirect costs were not made in compliance with the regulations of the Commonwealth, this Agreement or any agreement between TTC and the Commonwealth or its agencies.

**3.6 Commitment to Region.** Researcher acknowledges that TTC's nonprofit, charitable mission is to stimulate economic development in Pennsylvania, and that the failure of Researcher to maintain its primary office in the region would hinder the accomplishment of that mission and cause damages to TTC that are not readily determined with exactness. Accordingly, in the event that at any time prior to the completion of the Services and Deliverables to be provided by Researcher under this Agreement, Researcher moves its primary office outside of Pennsylvania, Researcher shall return all payments previously made by TTC hereunder, and in the event that such move is made within five (5) years after the completion of such Services and Deliverables, Researcher shall return all payments previously made by TTC hereunder. All payments made by Researcher under this Section 3.6 shall be considered liquidated damages and not penalties and such payments shall be made within thirty (30) days of date that Researcher first moves its primary office outside Pennsylvania.

#### **4. Relationship of the Parties.**

**4.1 Independent Contractor.** The parties agree that Researcher is an independent contractor and not an employee, agent, joint venturer, or partner of TTC. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between TTC and either Researcher or any employee or agent of Researcher.

**4.2 Compensation of Researcher's Personnel.** Researcher shall bear sole responsibility for payment of compensation to its personnel. Researcher shall be solely responsible to pay and report, for all personnel assigned to TTC's work, all federal, state and local income tax withholding, social security taxes, and unemployment insurance applicable to such personnel as employees of Researcher. Researcher shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or

pension benefits, if any, to which such personnel may be entitled. Researcher agrees to defend, indemnify, and hold harmless TTC, TTC's officers, directors, employees and agents, and the administrators of TTC's benefit plans, from and against any claims, liabilities, or expenses relating to such compensation, tax, insurance, or benefit matters.

**4.3 Workers' Compensation.** Notwithstanding any other workers' compensation or insurance policies maintained by TTC, Researcher shall procure and maintain workers' compensation coverage sufficient to meet the statutory requirements of every state in which Researcher's personnel are engaged in TTC's work.

**4.4 Researcher's Agreements with Personnel.** Researcher shall obtain and maintain in effect written agreements with each of its personnel who participate in any of TTC's work under any Statement of Work. Such agreements shall contain terms sufficient for Researcher to comply with all provisions of this Agreement, including, without limitation, the confidentiality restrictions and the intellectual property ownership and license provisions set forth in this Agreement.

**4.5 Acknowledgment.** Researcher acknowledges that some or all of the funds used to pay Researcher under this Agreement may have been provided to TTC by the Commonwealth of Pennsylvania. Accordingly, Researcher agrees to all conflict of interest, project audit and other requirements imposed on the use of such funding, including, without limitation, adhering to the non-discrimination and contractor integrity policies set forth in the Schedule attached as Exhibit B to this Agreement.

## **5. Confidentiality.**

**5.1 General.** During the five (5) year period commencing upon disclosure of the applicable Confidential Information, each party agrees not to transfer or otherwise disclose Confidential Information to any third party without the consent of the Disclosing Party provided that the Receiving Party may disclose such Confidential Information pursuant to any order of a court of competent jurisdiction or duly authorized regulatory body, including without limitation disclosure required under Section 5 of Exhibit B, as long as the Receiving Party gives the Disclosing Party sufficient prior notice to contest such order. Each party shall: (i) give access to such Confidential Information solely to those employees with a need to have access thereto for purposes of this Agreement; and (ii) take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the party takes with its own confidential information, but, in no event, shall a party apply less than a reasonable standard of care to prevent such disclosure or unauthorized use. Notwithstanding the foregoing, this Section 5.1 shall not limit the licenses granted in Section 6, or limit the parties from exercising the applicable license rights.

**5.2 Residuals.** The Receiving Party shall be free to use the Residuals resulting from access to the Disclosing Party's Confidential Information for any purpose (including the use, distribution or marketing of any product or service), subject to Receiving Party's obligation of non-disclosure; provided, however, that nothing contained herein shall grant any license or other rights to the Disclosing Party's patents or copyrights. The term "Residuals" means information in intangible form that may be retained in the unaided memories of the Receiving Party's employees who have had access to the Confidential Information pursuant to this Agreement. An employee's memory will be considered to be unaided if the employee has not relied on tangible materials containing such Confidential Information, and has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

## **6. Intellectual Property Rights.**

**6.1 Deliverable License.** Researcher hereby grants and agrees to grant to TTC a world-wide, royalty-bearing, nonexclusive, license to copy, use, distribute, modify, enhance and create Derivative Works of, and otherwise exploit the, Deliverables, and to make, have made, use and distribute and otherwise exploit products and/or services that embody all or part of any Intellectual Property Rights pertaining to the Deliverables, except to the extent that a Deliverable include: (i) standard, commercially available components that are both identified as such in the applicable Statement of Work and for which Researcher does not have the right to grant such license, or (ii) Researcher Background Technology that is identified as Researcher Background Technology in the applicable Statement of Work. The foregoing license shall bear a royalty at a commercially reasonable rate that is mutually acceptable to the parties, provided that (a) such license shall be perpetual and royalty-free for use of the Deliverables (or related Intellectual Property Rights) for purposes of testing and/or demonstrating the Deliverables or promoting TTC, and (b) in order to exercise such license for all other uses of the Deliverables and Intellectual Property Rights, TTC, or its sublicensees, must provide Researcher with notice of its exercise of such license within twenty four (24) months following completion of the Services and Deliverables and the royalty rate for such uses shall not be greater than the rate charged to any third party for the applicable Deliverable or Intellectual Property Rights.

**6.2 Background Technology License.** Researcher hereby grants and agrees to grant to TTC a royalty-bearing, nonexclusive, license to copy, use, distribute, modify, enhance, create Derivative Works of, publicly display and perform and otherwise exploit Researcher Background Technology (or any Intellectual Property Rights pertaining thereto) and to make, have made, use and distribute products that embody all or part of any Intellectual Property Rights pertaining thereto solely to the extent reasonably necessary or appropriate to exercise the license rights granted in Section 6.1. The royalty due pursuant to the preceding sentence shall be at a commercially reasonable rate that is mutually acceptable to the parties, provided that (a) such license shall be perpetual and royalty-free for purposes of testing and/or demonstrating the Deliverables or promoting TTC, and (b) in order to exercise such license for all other uses of the applicable Researcher Background Technology or related Intellectual Property Rights, TTC, or its sublicensees, must provide Researcher with notice of its exercise of such license within twenty four (24) months following completion of the Services and Deliverables and the royalty rate for such uses shall not be greater than the rate charged to any third party for the applicable Researcher Background Technology or related Intellectual Property Rights.

**6.3 Royalties to TTC.** Researcher shall pay to TTC a royalty equal to one percent (1%) of the gross amounts received by Researcher from the licensing or other transfer to any third party of any technology or Intellectual Property Rights that are included in Deliverable, in whole or in part, or any Researcher Background Technology licensed or otherwise transferred in connection with any such technology or Intellectual Property Rights, and one percent (1%) of the gross amounts received by Researcher from the sale or distribution of any product or service embodying all or any part of a Deliverable (or any technology or Intellectual Property Rights pertaining thereto). The maximum amount payable under this Section 6.3 relating to Services and Deliverables provided under a Statement of Work shall be twice the amount paid by TTC under such Statement of Work. Researcher shall pay such royalty to TTC within thirty (30) days of the end of each calendar quarter based on the amounts received by Researcher during such quarter, and each such payment shall be accompanied by a report indicating the amounts received by Researcher during such quarter that are subject to this Section 6.3. Researcher shall maintain records sufficient to verify the royalties due under this Section 6.3 for a period of three (3) years after the applicable license, transfer, sale or distribution, and TTC shall have the right to inspect such records upon reasonable notice and during normal business hours to the extent necessary to verify payment of royalties hereunder; provided that in the event that any such audit discloses an underpayment of more than five percent (5%) of the amount due, Researcher shall reimburse TTC for the reasonable expenses actually incurred in conducting the audit that disclosed such underpayment.

**6.4 Sublicenses.** TTC shall have the right to sublicense the licenses granted under this Agreement to any entity that is or was an active member of TTC at any time during TTC fiscal year during which the TTC determined that Researcher would receive the Statement of Work ("Sublicensee"). A Sublicensee shall not have the right to further sublicense or transfer the foregoing rights except to: (i) an entity that is or was an Affiliate of Sublicensee at any time during such fiscal year or at the time that a sublicense is granted to such entity, (ii) third-party contractors manufacturing or distributing products on behalf of the applicable Sublicensee, or (iii) the right to use and maintain the applicable products or services to customers thereof.

**6.5 Payment of Sublicensee Royalties to Researcher.** On a quarterly basis and to the extent that the licenses granted herein are royalty bearing, TTC shall remit to Researcher a royalty that is equal to ninety-nine percent (99%) of the difference of: (i) the royalties actually received by TTC during such quarter from Sublicensees pursuant to sublicenses granted in accordance with Section 6.4 minus, (ii) the portion of the royalties received by TTC that it is obligated to pay to the Commonwealth of Pennsylvania or one of its departments or agencies.

**6.6 Winding-up of TTC.** Should TTC be dissolved, any sublicense agreements entered into by TTC pursuant to this Section 6 shall be deemed to be assigned to Researcher, the sublicenses shall continue in accordance with the terms of the applicable sublicense agreement and the Sublicensee shall pay any royalties due pursuant to the sublicense agreement directly to Researcher.

**6.7 Intellectual Property Ownership.** Subject to the licenses granted herein, Researcher shall retain ownership of the Intellectual Property Rights pertaining to the Researcher Background Technology, Deliverables and all other technology conceived or developed by Researcher pursuant to this Agreement; provided that (i) any intellectual property jointly conceived or developed by the parties (and any Intellectual Property Rights pertaining thereto) shall be jointly owned by the parties, and (ii) Researcher shall not receive any ownership or other Intellectual Property Rights in any materials provided by TTC to Researcher hereunder that TTC has created or acquired from third parties.

**7. Warranty.** Researcher hereby represents and warrants that: (i) it has the full corporate power and authority to enter into this Agreement; (ii) the execution and performance of this Agreement does not conflict with any obligation to which it or its personnel are bound; (iii) the Services provided hereunder will be performed in a first class and professional manner; (iv) each Deliverable provided hereunder will conform to the specifications and/or additional representations and warranties set forth in the applicable Statement of Work; (v) the Services and Deliverables provided hereunder will not infringe or misappropriate any Intellectual Property Rights of any third party; (vi) Researcher will comply with all laws and regulations applicable to the provision of Services and Deliverables, including without limitation, all relevant NIH, NSF, export, privacy, data protection and other governmental or industry rules and regulations; (vii) Researcher has not been suspended or debarred by the Commonwealth of Pennsylvania or any other governmental entity; (viii) all Deliverables will be virus free; (ix) Researcher will cooperate fully with and in any manner requested by TTC in the fulfillment of all requirements imposed on the use of funds provided by the Commonwealth of Pennsylvania, including, but not limited to, those agreed to by the Researcher pursuant to Section 4.5 of this Agreement and (x) in the performance of this Agreement, Researcher will minimize pollution and strictly comply with all applicable environmental laws and regulations.

**8. Indemnification.** Researcher shall indemnify, defend and hold harmless, at Researcher's sole expense, TTC and TTC's subsidiaries and affiliates, and their respective directors, officers, employees, agents, shareholders, partners, members and other owners from and against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs and expenses (including reasonable

attorneys' fees) that are based in whole or in part on an actual or alleged breach of this Agreement (or allegation that, if true, would constitute such a breach), including, without limitation, the warranties contained in Section 7, or any negligent act or omission of Researcher in the performance of this Agreement or any Statement of Work.

**9. Disclaimer.** EXCEPT FOR A RESEARCHER'S OBLIGATIONS UNDER SECTIONS 4.1, 5.1, 6, 8 AND THE SCHEDULE ATTACHED AS EXHIBIT B TO THIS AGREEMENT, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (ii) IN NO EVENT SHALL TTC'S LIABILITY EXCEED IN THE AGGREGATE THE AMOUNT PAID TO RESEARCHER UNDER THE APPLICABLE STATEMENT OF WORK.

**10. Term and Termination.**

**10.1 Term.** This Agreement will become effective on the Effective Date first shown above and will continue in effect through the later of two (2) years after the Effective Date or the completion of all outstanding Statements of Work.

**10.2 Termination.** TTC may terminate any Statement of Work immediately upon written notice to Researcher in the event that (a) TTC's funding is terminated or reduced, or (b) Researcher fails to perform any of its obligations pursuant to this Agreement or any Statement of Work, including, but not limited to, the failure to provide reports, Deliverables, or other information when due, provided Researcher is given written notice and ten (10) business days to cure such failure. TTC may terminate this Agreement or any Statement of Work without reason upon thirty (30) days prior written notice to Researcher. Upon receipt of notice that a Statement of Work or this Agreement is being terminated hereunder, Researcher shall advise TTC of the extent to which performance has been completed through such date, and collect and deliver to TTC whatever Deliverables and other work product then exists, whether or not completed, in the manner requested by TTC. Researcher shall be paid for all work performed through the date of termination in accordance with the applicable Statement of Work.

**10.3 Survival.** Sections 1, 3.4, 3.5, 3.6, 5, 6, 7, 8, 9, 10.3 and 11 shall survive the expiration or termination of this Agreement.

**11. General Provisions.**

**11.1 Complete Understanding; Modification.** This Agreement and any duly executed Statements of Work constitute the complete and exclusive understanding and agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment of any provision of this Agreement or any Statement of Work will be effective only if in writing and signed by both parties hereto.

**11.2 Nonassignability and Binding Effect.** Researcher shall not assign this Agreement or any Statement of Work to any third party without the prior written consent of TTC. Subject to the foregoing, this Agreement and any Statement of Work shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

**11.3 Governing Law.** This Agreement, including any Statement of Work, and any claims, whether in contract, tort or otherwise, arising from this Agreement or any Statement of Work shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of conflicts of law. The parties agree that the state and federal courts sitting in

Pittsburgh, Pennsylvania USA shall have proper and exclusive jurisdiction and venue for any proceedings arising from this Agreement.

**11.4 Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change such address by written notice in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

**11.5 Subcontractors.** Except as set forth in the Statement of Work, Researcher shall not subcontract this Agreement, or any portion thereof, to any third party without the prior written consent of TTC. Notwithstanding any such subcontract, Researcher shall not be relieved of its performance or obligations under this Agreement and shall be responsible for all work performed by any subcontractor.

**11.6 Compliance with Laws.** Each party shall comply with all foreign, federal, state and local laws, licensing regulations and rulings of governmental bodies having jurisdiction over its business, including, without limitation, any regulations pertaining to government funding such as march-in rights. Nothing in this Agreement shall be construed to require either party to perform any act in violation of any laws, regulations or rulings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**THE ROBOTICS FOUNDRY AND DIGITAL GREENHOUSE, INC. d/b/a THE TECHNOLOGY COLLABORATIVE**

**NEWCO**

**By :** \_\_\_\_\_

**By :** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**THE TECHNOLOGY COLLABORATIVE  
TECHNOLOGY COMMERCIALIZATION AGREEMENT**

**EXHIBIT B**

**Schedule – State Provisions**

**1. Nondiscrimination. Researcher agrees to the following non-discrimination policies:**

**1.1** Researcher shall not discriminate against any employee, applicant for employment, subcontractor, supplier, or any other person because of race, color, religious creed, disability, ancestry, national origin, age, or sex. Researcher shall ensure that applicants and employees are treated during application and/or employment without regard to their race, color, religious creed, disability, ancestry, national origin, age or sex; include but not limited to employment, selection, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training. Researcher shall post in conspicuous places available to employees, agents, applicants for employment and other persons, a notice to be provided by the Commonwealth of Pennsylvania setting forth the provisions of this nondiscrimination clause.

**1.2** Researcher shall state in advertisements or requests for employment placed by it or on its behalf, that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex. Researcher shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Researcher. Researcher shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees. Researcher shall include the provisions of this nondiscrimination clause in every subcontract so that such provisions will be binding upon each subcontractor.

**1.3** It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Researcher had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. Researcher shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by TTC or its designee for purposes of investigation to ascertain compliance with the provisions of this clause. If Researcher does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by TTC or its designee.

**1.4** Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons so that Researcher will be unable to meet its obligations under this nondiscrimination clause, Researcher shall then employ and fill vacancies through other nondiscriminatory employment procedures. Researcher shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Researcher's noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and Researcher may be declared temporarily ineligible for further Commonwealth-funded contracts, and other sanctions may be imposed and remedies invoked.

**1.5** Researcher shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

**1.6** Researcher shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by TTC or its designees, for purposes of investigation, to ascertain compliance with provisions of this Section 1. If Researcher does not possess documents or records reflecting the necessary information requested, Researcher shall furnish such information on reporting forms supplied by TTC or its designees.

**1.7** TTC may cancel or terminate this Agreement and all money due or to become due under this Agreement may be forfeited for a violation of the terms and conditions of this Section 1. In addition, the Researcher may be subject to debarment or suspension and Researcher may be placed in the Contractor Responsibility File.

**1.8** Each subcontract by Researcher under this Agreement, if such subcontract is permitted, shall include the provisions of this Section 1 such that it is binding as to each subcontractor.

**2. Americans with Disabilities Act.** Researcher understands and agrees that pursuant to Federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. 35.101 *et seq.*, no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, Researcher agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act. Researcher shall be responsible for, and agrees to indemnify and hold harmless TTC and the Commonwealth from, any and all losses, damages, expenses, claims, demands, suits and actions brought by any party against TTC or the Commonwealth as a result of Researcher's failure to comply with the provisions of this Section 2.

### **3. Contractor Integrity.**

**3.1 Definitions.** The following definitions are applicable to this Section 3: (a) "Researcher Entities" means the individual or entity that has entered into the Agreement (other than TTC), including its directors, officers, partners, managers, key employees and owners of more than a five percent interest; (b) "Financial Interest" means: (i) ownership of more than a five percent interest in any business; or (ii) holding a position as an officer, director, trustee, partner, employee or the like, or holding any position of management; and (c) "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.

**3.2 Obligations.** Researcher shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations or other requirements that govern contracting with TTC or the Commonwealth. Researcher shall not, in connection with this or any other Agreement with TTC or the Commonwealth, directly or indirectly (i) offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any officer or employee of TTC or the Commonwealth; or (ii) offer, give or agree or promise to give anyone any gratuity for the benefit of, or at the direction or request of, any officer or employee of TTC or the Commonwealth. Except with the prior written consent of TTC, (i) neither Researcher nor anyone in privity with Researcher shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement, except as expressly provided therein; and (ii)

Researcher shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material under this Agreement. Researcher, upon being informed that any violation of the provisions of this Section 3 has occurred or may occur, shall immediately notify TTC in writing. TTC, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of the provisions of this Section 3.

**3.3 Inspections and Remedies.** Researcher, upon the inquiry or request of TTC or its designee, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by TTC to Researcher's integrity or responsibility, as those terms are defined by Commonwealth's statutes, regulations or management directives. Such information may include, but shall not be limited to, Researcher's business or financial records, documents or files of any type or form which refer to or concern this Agreement. Such information shall be retained by Researcher for a period of three (3) years beyond the termination of this Agreement unless otherwise provided by law. For violation of any of the above provisions, TTC may terminate this Agreement and any other agreement with Researcher, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another researcher to complete performance hereunder. Additionally, Researcher may be debarred and suspended from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use thereof shall not preclude the use of all or any other. These rights and remedies are in addition to those TTC or the Commonwealth may have under law, statute, regulation or otherwise.

#### **4. Illegal Alien Labor**

**4.1** Researcher understands and agrees that pursuant to the Act of May 11, 2006 (P.L. 173, No. 43), known as the Prohibition of Illegal Alien Labor on Assisted Projects Act, Researcher shall not knowingly employ, or knowingly permit any of its subcontractors (if such subcontract is permitted) to knowingly employ, the labor services of an illegal alien on activities provided for, in whole or in part, under this Agreement.

**4.2** In the event that (i) Researcher knowingly employs, or knowingly permits any of its subcontractors (if such subcontract is permitted) to knowingly employ, the labor services of an illegal alien on activities provided for, in whole or in part, under this Agreement, and (ii) Researcher or any of its subcontractors (if such subcontract is permitted) are sentenced under federal law for an offense involving knowing use of labor by an illegal alien on activities provided for, in whole or in part, under this Agreement, Researcher shall be responsible for, and agrees to indemnify and hold harmless TTC from, any and all losses, damages, expenses, claims, demands, suits and actions brought by any party against TTC, including the repayment of any funds by TTC to the Commonwealth and any lost funding from the Commonwealth resulting from Researcher's violation of any of the provisions of this Section 4.

#### **5. Right to Know Law**

**5.1** Researcher understands and acknowledges that the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-3104 applies to this Agreement.

**5.2** Upon notice from TTC pursuant to Section 11.4 of this Agreement, Researcher shall provide TTC, within seven (7) calendar days, access to, and copies of, any document or information in Researcher's possession which is requested by TTC ("Requested Information") and shall provide such other assistance as TTC may request in order to comply with the RTKL.

**5.3** In the event that Researcher considers the Requested Information to include Trade Secret or Confidential Proprietary Information (as such terms are defined in the RTKL), Researcher shall

## SAMPLE -- SAMPLE -- SAMPLE -- SAMPLE

provide, within three (3) calendar days, a written statement explaining why such information is exempt from disclosure under the RTKL. Researcher understands and agrees that TTC, after review, may decide, in its sole discretion, that such information is not exempt from disclosure under the RTKL.

**5.4** TTC shall reimburse Researcher for any costs associated with its compliance with the provisions of this Section 5 only to the extent of costs reimbursed to TTC by the Commonwealth under the fee schedule established with the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

**5.5** Researcher shall abide by any decision to release a record to the public made by the Office of Open Records or by the Pennsylvania Courts. Researcher hereby knowingly waives all rights or remedies that may be available to it as a result of the disclosure of Requested Information pursuant to the RTKL. Researcher's duties relating to the RTKL are continuing duties that survive the execution or termination of this Agreement.

**6. Acknowledgment of Commonwealth Assistance.** Researcher understands and agrees that any publication concerning any activities provided for, in whole or in part, by funds provided to TTC from the Commonwealth shall acknowledge Commonwealth financial assistance by including the following phrase: "This Project was financed [in part] by a grant from the Commonwealth of Pennsylvania, acting through the Ben Franklin Technology Development Authority."

## **SAMPLE -- SAMPLE STATEMENT OF WORK**

This Statement of Work is issued pursuant to the Technology Commercialization Agreement ("Agreement") between **The Robotics Foundry and Digital Greenhouse, Inc., d/b/a The Technology Collaborative** ("TTC") and **NewCo, LLC** ("Researcher"), dated \_\_\_\_\_ and the terms and conditions of such Agreement shall be applicable to the research conducted and Deliverables developed under this Statement of Work.

**1. Effective Period of Performance.**

May 1, 2010 through April 30, 2011

**2. Project Director(s).**

Karl Muckinfuss, Ph.D.

**3. Subject Matter of Research & Program Title.**

Title: XXXXXXXXXXXXXXXXXXXXXXXXXX

**4. Description of Research.**

The development conducted here will examine the interaction ....

**5. Program Schedule**

The program will span eight months and consist of five tasks. Each task has a specific milestone:

Task ID	Task	Month within the project and deliverables							
		1	2	3	4	5	6	7	8
1	Project Start	A							
2	Code Design Document		B						
3	Beta Release					C			
4	Testing and Documentation							D	
5	Final Report								E

**6. Required Reporting**

- 6.1 Quarterly technical and financial summary reports.
- 6.2 Final report at conclusion of program.
- 6.3 Presentation materials (as required).
- 6.4 Technology-based economic development data as requested by TTC and required by the Commonwealth of Pennsylvania for the five (5) year period following project completion.
- 6.5 Reports and materials to be sent to:  
C.D. Brandt  
CTO, The Technology Collaborative  
2000 Technology Drive, Suite 102  
Pittsburgh, PA 15219-3110

**7. Compensation, including Schedule or Milestones for Payments.**

- 7.1. Total cost to TTC: \$120,000
- 7.2. Total match commitment by Researcher: \$60,000
- 7.3. Total program cost: \$180,000

## SAMPLE -- SAMPLE

7.4. Payment schedule:

- 50% monthly invoicing in equal payments.
- 10% upon completion of A Milestone.
- 10% upon completion of B Milestone.
- 10% upon completion of C Milestone.
- 10% upon completion of D Milestone.
- 10% upon completion and transfer of all deliverables

**Note:** invoices for milestone and deliverable payments require written approval of TTC CTO for payment.

7.5. Invoicing: Monthly

7.6. Invoice address:

C.D. Brandt  
CTO, The Technology Collaborative  
2000 Technology Drive, Suite 102  
Pittsburgh, PA 15219-3110  
Payment: net 30

**8. Deliverables.**

8.1. TBD...

8.2. Reports and materials as described in section 6. A final budget document detailing the dollar amount and form of matching effort contributed towards the successful completion of the program must also be submitted; TTC will provide the template for this budget document.

**9. Background Intellectual Property and Sources.**

9.1. TBD or NONE

**10. Export and Other Legal Restrictions.**

TBD or NONE

**11. Services**

TBD...

EXAMPLE: NewCo will provide services and products specific to this program at preferred rates to TTC member companies conditioned upon the scope of TTC member company requests and availability of NewCo resources. Preferred rates are available to TTC members for a period of 3 years following the date of this contract.

IN WITNESS WHEREOF the parties have entered into this Statement of Work as of the date set forth above on this Statement of Work.

**THE ROBOTICS FOUNDRY AND DIGITAL  
GREENHOUSE, INC. d/b/a  
THE TECHNOLOGY COLLABORATIVE**

**NEWCO, LLC**

By : \_\_\_\_\_

By : \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_