

AUSTIN TECHNOLOGY INCUBATOR

Member Services Agreement

This Member Services Agreement (the "Agreement") is entered into on _____ (the "Effective Date") between The University of Texas at Austin on behalf of its Austin Technology Incubator ("ATI") with offices at 3925 West Braker Lane, Austin, TX 78759 and [_____] (the "Company"), with offices at [_____] regarding the admission and responsibilities of the Company as a member of the Austin Technology Incubator. Now therefore, ATI and the Company agree to the following terms and conditions of membership:

1. Term of Membership

Membership shall be for one year from the date that this Agreement is executed by both ATI and the Company, the later execution date marking the beginning of the term. Membership is renewable yearly at ATI's sole discretion for a total maximum membership term of three years (including the first year of membership).

2. Termination Without Cause

This Agreement may be terminated by ATI or Company *at any time without cause or recourse* by giving the other party not less than 30 days written notice of the terminating party's intention to terminate this Agreement as of a specified date.

3. Space

In the event that the Company desires to occupy office space from the ATI, then the Company must also execute a Space Utilization Agreement.

4. Benefits Included in Membership

All members in good standing with the ATI may take advantage of services described in the *Guide to ATI Services* attached as **Exhibit A**.

5. Membership Fees

The Company agrees to pay the Membership Fee outlined in **Exhibit B** attached hereto throughout the Term of Membership. Payment shall be made quarterly in advance. A 10% monthly penalty may be assessed on any payments that are over 10 days past due. Payments that are over 30 days past due constitute grounds for immediate termination of this Agreement and the termination of any Space Utilization Agreement. In the event that this Agreement is terminated, the Company agrees to forfeit all paid Membership Fees.

6. Equity Agreement

The Company agrees to make an additional fee payment in the form of stock donation to the Austin Entrepreneurs Foundation (AEF) for the beneficial use of ATI and to have this donation directed towards the Austin Technology Incubator. The Company agrees to exercise its best efforts to negotiate with ATI and AEF regarding the exact amount of stock to be donated. If the Equity Agreement documentation is not executed by the Company within 60 days after the

Effective Date of this Agreement, ATI shall have the right to terminate this Agreement and any Space Utilization Agreement, effective immediately.

7. Publicity

The Company agrees to issue a mutually agreeable joint press release with ATI within a mutually agreeable time period after execution of this Agreement indicating the Company's admission into the ATI.

The Company will allow ATI to list the Company as a member in all of its marketing collateral, websites, and press releases. The Company will also allow ATI to include publicly available information about the Company in all said forms of communication.

The Company agrees to include a brief statement regarding its membership status at the ATI and to include an "About ATI" paragraph provided by ATI in relevant press releases issued by the Company which shall in no case be less than one per calendar year throughout the Term of Membership, unless the Company has not issued any press releases in that calendar year. In addition, the Company agrees to reference its membership in the ATI on a conspicuous location of the Company's website and provide a link to the ATI website.

8. Quarterly Reviews

For as long as this Agreement is in effect, the Company agrees to provide a complete Company update to the ATI in a closed-door, private setting at least 4 times per calendar year to allow ATI to understand the status of the Company so that it can plan how to best serve the Company's needs. This update should be substantially equivalent to what the Company would provide its own Board of Directors. Present on behalf of ATI will be at least one ATI Director as well as one or more Mentors or Advisors which the ATI and the Company will jointly agree upon in advance.

9. Observation Seat at Meetings of the Board of Directors

For as long as this Agreement is in effect, the Company agrees to allow ATI to participate in all meetings of its Board of Directors as an "observer" with no voting rights.

10. Confidentiality

The Company agrees that upon commencement of the Company's membership in ATI, it may provide Confidential Information of the Company that will enable ATI to optimize the performance of its duties. In exchange, ATI agrees to use such Confidential Information solely for the Company's benefit. ATI recognizes "Confidential Information" to mean any Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, business plans, research, product plans, products, services, customer lists and customers, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment. Confidential Information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act of ATI.

ATI will at all times during the term of the Company's membership and for three years thereafter, hold the Confidential Information in strictest confidence, and not use, except for the

exclusive benefit of the Company, or disclose to any person, firm or corporation other than employees, Mentors, or Advisors of the ATI or the IC2 Institute or employees of University with a need to know or unless required by law to disclose. Except as otherwise provided, disclosure to any other third parties will require written authorization by the Company.

Notwithstanding the above, Company is advised that ATI and the IC2 Institute are an agency of the State of Texas and therefore subject to the Texas Public Information Act, Chapter 552, Texas Government Code, that makes most information public as a matter of law. Information will not be subject to the non disclosure restrictions above to the extent such information: (i) is known to ATI prior to receipt from the Company; (ii) becomes known (independent of disclosure by the Contractor) to ATI directly or indirectly from a source other than one having an obligation of confidentiality to the Company; (iii) becomes publicly known or otherwise ceases to be secret or confidential through no wrongful act of ATI; or (iv) is independently developed by ATI without the use of Confidential Information. ATI may disclose Confidential Information pursuant to the requirements of a governmental agency, court, or by operation of law.

11. Independent Contractor

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Company is an independent contractor and is not a state employee, partner, joint venturer, or agent of ATI. Company will not bind nor attempt to bind ATI to any agreement or contract. As an independent contractor, Company is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance.

12. Venue; Governing Law

Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

13. Compliance with the Law

ATI is an agency of the State of Texas and subject to all the rules and regulations contained in the Texas Government Code and Texas Education Code, and nothing in this Agreement shall be construed to prevent or restrict the University of Texas at Austin from compliance with the provisions of State law.

Company will comply with all relevant laws and regulations, including the *Rules and Regulations* of the Board of Regents of The University of Texas System, and further including the laws, rules and policies relating to conflict of interest, ethical behavior, equal opportunity, compliance and safety.

ATI and Company have executed and delivered this Agreement to be effective as of the effective date.

**The University of Texas at Austin
on behalf of the Austin Technology Incubator**

Insert Company Name

By: _____

By: _____

Name: Debra Y. Stevens

Name: _____

Title: Business Contracts Administrator

Title: _____

Date: _____

Date: _____

APPROVED AS TO CONTENT:

By: _____

Date: _____

Dr. Juan M. Sanchez
Vice President for Research

EXHIBIT A
Guide to ATI Services
(separately attached)

**EXHIBIT B
Membership Fees**

ATI Annual Membership Fees	
Number of Employees:	Fee:
1-5	\$5,000
6-10	\$10,000
11-20	\$15,000
21-30	\$20,000
<ul style="list-style-type: none">• The number of employees will be calculated by counting the total number of Full Time Equivalent employees of the Company which are physically located in the United States of America, including full-time and part-time contractors. The number of employees will be audited by ATI quarterly.• The annual membership fee will be payable quarterly in advance and based on the number of employees in the company at the time that the quarterly payment is due. In the event that Membership is terminated, the Company will forfeit all fees paid to ATI.	