

**MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

**75 NORTH DRIVE  
WESTBOROUGH, MASSACHUSETTS 01581**

**CONSTRUCTION AND RELATED SERVICES AGREEMENT**

This Construction and Related Services Agreement (as amended from time to time, the "Agreement") is made and entered into by and between Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative ("MassTech"), an independent public instrumentality of the Commonwealth of Massachusetts with a principal office and place of business at 75 North Drive, Westborough, Massachusetts, 01581, and ICMPartnerName, with a principal place of business at ICMPartnerPrimaryAddressLine1, ICMPartnerPrimaryAddressLine2, ICMPartnerPrimaryAddressCity, ICMPartnerPrimaryAddressState, ICMPartnerPrimaryAddressZipCode ("Contractor").

Whereas, MassTech desires to retain Contractor to render certain services to MassTech and Contractor desires to be so retained by MassTech and to perform the services specified herein, all in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. Term and Termination:**

- a) Term: This Agreement shall take effect as of ICMContractEffectiveDate (the "Effective Date") and shall remain in effect until ICMContractPeriodofPerformanceEndDate (the "Term").
- b) Termination or Suspension Procedures: This Agreement will terminate on the date specified above, unless amended to extend the term hereof, or unless earlier terminated or suspended as provided below.
  - i) *Immediate Termination or Suspension - Bankruptcy, Fraud or Material Breach*: This Agreement shall terminate automatically, without further action by either party, in the event of a bankruptcy, receivership or insolvency filing by or against Contractor or the commission by either party of any action constituting fraud on the part of such party in its dealings with the other party or with the Commonwealth. This Agreement shall terminate (or, at the election of the notifying party, be suspended) immediately upon receipt by a party of written notice of termination (or suspension) from the other party in the event of such party's material breach of the provisions of this Agreement. The notice shall identify the relevant Section(s) of this Agreement breached by the other party and the nature of such breach. If a party notified of suspension hereunder cures the breach referenced in the notice to the reasonable satisfaction of the notifying party within fifteen (15) days (or such greater or lesser number of days as is specified by the notifying party in said notice) of receipt of such notice, this Agreement shall automatically be reinstated and shall be in full force and effect as if the notice had not been issued; if not, this Agreement shall thereupon automatically terminate, without further action by either party, on such date.
  - ii) *Cure Period for Breach of Contract*: In the event Contractor breaches any of its representations, warranties or covenants or any other provision of this Agreement, MassTech may, at its option and in lieu of or after declaring this Agreement immediately suspended or terminated under the immediately preceding clause, provide Contractor with written notice of the opportunity to cure such breach. If Contractor cures the particular breach within fifteen (15) days (or

such greater or lesser number of days as is specified by MassTech in said notice) of the receipt by Contractor of such notice, this Agreement shall continue in full force and effect as if the notice had not been issued. If Contractor fails to cure such breach within such cure period, this Agreement shall thereupon automatically terminate.

- iii) *Termination With Cause:* Upon termination of the Agreement by MassTech with cause, MassTech may without prejudice to any other right or remedy and upon written notice to the Contractor, take possession of all materials, tools, appliances, equipment, machinery and vehicles on the project site, and all materials intended for the project, wherever stored, and finish the work by whatever method MassTech may deem expedient. MassTech shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by MassTech on account of the Contractor's default, including without limitation additional services and expenses of the MassTech Project Engineer (if such was utilized by MassTech for work hereunder) made necessary thereby. MassTech shall be entitled to hold all amounts due the Contractor at the date of termination until all of MassTech's damages have been established, and to apply such amounts to such damages. To the extent the costs of completing the work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to Contractor to complete the work, Contractor shall pay such excess to MassTech, and this obligation for payment shall survive the termination of the Agreement. Such costs incurred by MassTech will be determined by MassTech and confirmed by the MassTech Project Engineer.
- iv) *Suspension by MassTech for Convenience:* MassTech may, without cause, order the Contractor in writing to suspend, delay or interrupt the work in whole or in part for such period of time as MassTech may determine. The Contract Sum as set forth in Attachment B and Contract Term shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in this subsection. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:- (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of the Agreement.
- v) *Change of Law or Loss of Available Funding:* MassTech may terminate this Agreement at any time upon provision of written notice to Contractor in the event of the loss of availability of sufficient funding for the purposes of this Agreement, or in the event of an unforeseen public emergency or change of law mandating action by MassTech which is inconsistent with performing its obligations under this Agreement or rendering further performance by MassTech of its obligations hereunder impracticable or impossible.
- vi) *Stoppage of work:* If the work is stopped for a period of sixty days through no act or fault of the Contractor or a subcontractor or their agents or employees or any other persons performing portions of the work under contract with the Contractor because MassTech has persistently failed to fulfill its obligations under the Agreement with respect to matters important to the progress of the work, the Contractor may, upon seven additional days' written notice to MassTech and the MassTech Project Engineer, terminate the Agreement and recover from MassTech payment for work properly executed according to the Agreement and payment for costs directly related to the work thereafter performed by the Contractor in terminating such work, including reasonable demobilization and cancellation charges, provided such work is authorized in advance by MassTech.

- b) Obligations in Event of Termination; Survival: Upon termination of this Agreement, the parties shall have the following obligations:
- i) *Obligations of the Contractor:* (1) cease operations as directed in the written termination notice; (2) take necessary actions as directed by MassTech in the written termination notice to protect and preserve the work; (3) except for work directed to be performed in the written termination notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and (4) deliver to MassTech a compendium of all documentation related to the work.
  - ii) *Payment:* Contractor shall be paid for all requested and authorized work described in the Agreement and executed up to and including the date of termination. In the event MassTech elects to terminate the Agreement without cause, the Contractor will also be entitled to receive payment for costs incurred by reason of such termination, along with reasonable overhead and profit on the work authorized in writing by MassTech but not executed.
  - iii) Sections 10 through 26 of this Agreement shall survive termination of this Agreement.
2. **Scope of Services:** MassTech hereby retains Contractor to provide services to MassTech during the Term of this Agreement, and Contractor hereby accepts such engagement. Contractor represents itself as competent and qualified to accomplish the specific requirements of this Agreement to the satisfaction of MassTech and in accordance with the terms and conditions of this Agreement and acknowledges that MassTech is relying upon such representation in entering into this Agreement. The Contractor shall perform the scope of services as provided in the technical specifications contained in Attachment A.
3. **Changes in the work:**
- a) Changes in the work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order or order for a minor change in the work, subject to the limitations stated in this Section and elsewhere in this Agreement.
  - b) A Change Order shall be based upon agreement among MassTech, Contractor and MassTech Project Engineer; an order for a minor change in the work may be issued by the MassTech Project Engineer alone.
  - c) Changes in the work shall be performed under applicable provisions of the Agreement, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or order for a minor change in the work.
  - d) If unit prices are stated in the Agreement or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of such unit prices to quantities of work proposed will cause substantial inequity to MassTech or Contractor, the applicable unit prices shall be equitably adjusted.
  - e) A Change Order is a written instrument prepared by the MassTech Project Engineer and signed by MassTech, Contractor and MassTech Project Engineer, stating their agreement upon all of the following: (i) a change in the work; (2) the amount of the adjustment in the Contract Sum due to the Contractor, if any; and (3) the extent of the adjustment in the Contract Time, if any.
  - f) The MassTech Project Engineer will have authority to order minor changes in the work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Agreement. Such changes shall be effected by written order and shall be binding on MassTech and Contractor. The Contractor shall carry out such written orders promptly.

4. **Correction of work:**

- a) The Contractor shall promptly correct work rejected by MassTech or failing to conform to the requirements of the Agreement, whether observed before or after substantial completion of the work and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected work, including additional testing and inspections and compensation for the MassTech Project Engineer's services and expenses made necessary thereby and any cost, loss, or damages to MassTech resulting from such failure or defect.
- b) The Contractor shall remove from the site portions of the work which are not in accordance with the requirements of the Agreement and are neither corrected by the Contractor nor accepted by MassTech.
- c) If the Contractor defaults or neglects to carry out the work in accordance with the Agreement and fails within a fifteen-day period after receipt of written notice from MassTech to begin and prosecute correction of such default or neglect with diligence and promptness, MassTech may, without prejudice to other remedies MassTech may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the MassTech Project Engineer's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to MassTech.
- d) If the Contractor does not proceed with correction of such nonconforming work within a (15) fifteen day period after receipt of written notice from MassTech, MassTech may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within twenty days after written notice, MassTech may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the MassTech Project Engineer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to MassTech.
- e) If MassTech prefers to accept work which is not in accordance with the requirements of the Agreement, MassTech may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

5. **Payment:**

- a) MassTech shall compensate Contractor as set forth in Attachment B. Payments hereunder will generally be made by MassTech within thirty (30) days following receipt of a reasonably detailed invoice from Contractor evidencing that payment is due hereunder. Before the first invoice for payment is submitted, MassTech may require the Contractor to submit a schedule of values allocated to various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as MassTech and the MassTech Project Engineer may require. This schedule, unless objected to by MassTech and the MassTech Project Engineer, shall be used as a basis for reviewing the Contractor's invoices.
- b) Contractor will submit itemized invoices for payment for operations completed in accordance with the schedule of values, if any. Invoices shall be supported by such data substantiating the Contractor's right to payment as MassTech may require, such as copies of requisitions from subcontractors and material suppliers, and reflecting retainage as provided in Section 5(d). Invoices may not include requests for payment of amounts

the Contractor does not intend to pay to a subcontractor or material supplier because of a dispute or other reason Invoices shall indicate the percentage of completion of each portion of the work as of the end of the period covered by the invoice.

- c) Notwithstanding anything to the contrary in the Agreement, MassTech may withhold any payment to Contractor if and for so long as Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Agreement; provided, however, any such holdback shall be limited to any amount sufficient in the reasonable opinion of MassTech to cure any such default or failure of performance by Contractor.
- d) A ten percentage retainage shall be applied to payment amounts requested in each invoice submitted prior to substantial completion of the work. The MassTech Project Engineer may recommend that amounts be withheld after substantial completion of the work for incomplete work and unsettled claims.
- e) The Contractor shall promptly pay each subcontractor, upon receipt of payment from MassTech, out of the amount paid to the Contractor on account of such subcontractor's portion of the work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such subcontractor's portion of the work. The Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in similar manner. Payment to material suppliers shall be treated in a similar manner.
- f) MassTech shall not have an obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.
- g) Payment of an invoice by MassTech shall not constitute acceptance of work not in accordance with the Agreement.
- h) Upon receipt of a written notice that the work is ready for final inspection and acceptance and upon receipt of a final invoice for payment, the MassTech Project Engineer will make such inspection and, when the MassTech Project Engineer finds the work acceptable under the Agreement and the Agreement fully performed, the MassTech Project Engineer will promptly issue a letter to MassTech stating that to the best of the MassTech Project Engineer's knowledge, information and belief, and on the basis of the MassTech Project Engineer's observations and inspections, the work has been completed in accordance with terms and conditions of the Agreement and that the entire balance found to be due the Contractor and noted in said final invoice is due and payable.
- i) Neither final payment nor any retainage shall become due until the Contractor submits to MassTech: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the work for which MassTech might be responsible or encumbered (less amounts withheld by MassTech) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Agreement to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to MassTech, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Agreement, (4) consent of surety, if any, to final payment; (5), if required by MassTech other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by MassTech; and (6) evidence of compliance with all requirements of the Agreement, including Contractor's compliance with prevailing wage requirements.

6. **Priority of Agreement:** In the event of any conflict among the Agreement, the Documents shall be construed according to the following priorities:

- a) Highest Priority: Change Order, with later date having greatest priority.

- b) Second Priority: Agreement.
- c) Third Priority: Addenda, with later date having greater priority.
- d) Fourth Priority: Specifications and related Schedules.
- e) Fifth Priority: Drawings.

7. **Project Personnel and Subcontracting:**

- a) A list of the relevant Project Personnel shall be submitted to MassTech for approval prior to performing the work. Unless otherwise agreed by the parties, each party will use all reasonable efforts to maintain the same personnel on its project team unless replacement is necessitated by the resignation, extended illness, incapacity or death of specific Project Personnel. Either party may request the removal or replacement of any individual(s) from the other party's project team but shall not do so on frivolous or vexatious grounds. Such a request shall include the reasons for the requested change. If such a request is based on reasonable grounds then each party shall use all reasonable efforts to replace the relevant individual promptly.
- b) Contractor shall not assign or in any way transfer any interest in, or any of Contractor's rights or obligations under this Agreement, including by operation of law, without the prior written consent of MassTech, nor shall Contractor subcontract any services to anyone without the prior written consent of MassTech.
- c) By appropriate agreement, written where legally required for validity, the Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by terms of the Agreement, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward MassTech. Each subcontract agreement shall preserve and protect the rights of MassTech under the Agreement with respect to the work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Agreement, has against MassTech. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Agreement to which the subcontractor will be bound, and, upon written request of the Subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Agreement. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.
- d) Each subcontract agreement for a portion of the work is assigned by the Contractor to the owner provided that:- (i) assignment is effective only after termination of the Contract by the wner for cause and only for those subcontract agreements which the owner accepts by notifying the subcontractor in writing; and (ii) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the work.
- e) The current classifications and wage rates as established by the Commonwealth of Massachusetts Department of Labor and Industries are hereby made a part of this Agreement. The Contractor and each subcontractor shall pay prevailing wages as required by M.G.L. c.149.

8. **Timely Performance:** Contractor acknowledges that expeditious completion of Contractor's services and the expeditious delivery of related deliverables is of the utmost importance to MassTech.

9. **Notices:**

- a) All communications to MassTech regarding legal issues shall be emailed to MassTech General Counsel Jennifer M. Saubermann at [saubermann@masstech.org](mailto:saubermann@masstech.org) followed by hardcopy to the following address:

Massachusetts Technology Collaborative  
75 North Drive  
Westborough, MA 01581  
508/870-0312 (phone)  
508/898-2275 (fax)  
Attn: General Counsel

- b) All communications regarding any other issues shall be emailed or delivered to the personnel specified in Attachment A.

Any notice hereunder shall be in writing and shall be effective (i) if dispatched by email and delivery is electronically confirmed by said media the day such electronic confirmation is received, (ii) if sent by courier, one business day after dispatch, (iii) if sent by first class mail, five business days after its date of posting.

10. **Contractor's Representations, Warranties and Certifications:** As of the date of this Agreement, and as of each date on which a work order is entered into by the parties, Contractor hereby represents, warrants and certifies under the pains and penalties of perjury as follows:

- a) Contractor is duly authorized to enter into this Agreement (including all work orders hereunder), and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Contractor or any of its assets is bound.
- b) Contractor and all Project Personnel of Contractor are fully capable and qualified to perform the described service(s) and Contractor's other obligations under this Agreement, and have obtained all requisite licenses and permits to perform such obligations.
- c) Contractor and its Project Personnel are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other Governmental Authorities applicable to or implicated by the subject matter of this Agreement.
- d) A duly authorized representative of Contractor has visited the site of the project, familiarized himself with the local and special conditions under which the scope of services is to be performed, and correlated his observations with the requirements of the Agreement;
- e) Contractor and its employees are independent contractors of MassTech, and not employees, partners or joint-venturers of MassTech. Contractor will be solely responsible for withholding and paying all applicable payroll taxes of any nature, including social security and other social welfare taxes or contributions that may be due on amounts paid to its employees. Contractor has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System, and with all laws of the Commonwealth relating to worker's Compensation, M.G.L. c.152.
- f) Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in

employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and M.G.L. c.151B.

- g) Contractor represents and warrants that all personnel supplied under this Agreement are eligible to work in the United States at the time of execution of this Agreement and that Contractor has a continuing obligation to ensure such status for the duration of the Agreement.

11. **Contractor's General Obligations and Responsibilities**

- a) Before starting the work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Agreement with each other and with any additional information furnished by MassTech and shall at once report to the MassTech Project Engineer any error, inconsistency, or omission the Contractor may discover. Any necessary change shall be ordered, subject to other provisions of the Agreement. If the Contractor proceeds with the work without such notice to the MassTech Project Engineer, having discovered such errors, inconsistencies, or omissions, the Contractor shall bear all costs arising therefrom.
- b) The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Agreement before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the MassTech Project Engineer at once.
- c) The Contractor shall perform the work in accordance with the Agreement and submittals approved by MassTech.
- d) The Contractor shall give the MassTech Project Engineer timely notice of any additional Drawings, Specifications, or instructions required to define the work in greater detail, or to permit the proper progress of the work.
- e) The Contractor shall not proceed with any work not clearly and consistently defined in detail in the Agreement, but shall request additional drawings or instructions from the MassTech Project Engineer. If the Contractor proceeds with such work without obtaining further Drawings, Specifications, or instructions, the Contractor shall correct work incorrectly done at the Contractor's own expense.
- f) The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work. Where the Agreement refer to particular construction means, methods, techniques, sequences, or procedures or indicate or imply that such are to be used in the work, such mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the work shall be the responsibility of the Contractor, who shall notify the MassTech Project Engineer in writing of the actual means, methods, techniques, sequences, or procedures which will be employed on the work, if these differ from those mentioned in the Agreement. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences, or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences, or procedures are referred to, indicated, or implied by the Agreement, unless the Contractor has given timely notice to MassTech and the MassTech Project Engineer in writing that such means, methods, techniques, sequences, or procedures are not safe or suitable, and MassTech has then instructed the Contractor in writing to proceed at MassTech's risk.

- g) The Contractor shall be responsible to MassTech for the acts and omissions of all entities or persons performing or supplying the work.
- h) The Contractor shall not be relieved of obligations to perform the work in accordance with the Agreement either by activities or duties of the MassTech Project Engineer in the MassTech Project Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- i) The current classifications and wage rates as established by the Commonwealth of Massachusetts Department of Labor and Industries are hereby made a part of this Agreement. The Contractor and each subcontractor shall pay prevailing wages as required by M.G.L. c.149.
- j) The Contractor shall be responsible for inspection of portions of work already performed to determine that such portions are in proper condition to receive subsequent work.
- k) Contractor has the responsibility to insure that all suppliers of material and subcontractors, their agents and employees, adhere to the Agreement and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its work with that of all others involved with the work.
- l) Contractor shall provide access to the work for MassTech, the MassTech Project Engineer, other persons designated by MassTech and governmental inspectors. If any work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed.
- m) The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall use its best efforts to maintain labor relations (including using the appropriate unions) for the duration of the project and shall at all times use its best efforts and judgment, as an experienced contractor, to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible. In the event of a labor dispute, Contractor shall not be entitled to any increase in compensation.
- n) Contractor shall not cause or permit any liens for labor or materials performed or furnished in connection with the work to attach to the project or the property of which the project is a part and shall promptly discharge or bond over any such liens that may so attach at Contractor's sole expense. If Contractor fails so to discharge or bond over any such lien within ten days after notice from MassTech, MassTech may, at its option, take such actions and make such payments as are necessary to obtain such discharge or procure such bond, but MassTech shall have no obligation to take such actions or make such payments. Contractor shall indemnify and hold harmless MassTech against any assertion of claim for mechanics' or materialmen's liens by subcontractors, sub-subcontractors or suppliers of material and against any assertion of security interests by suppliers of goods or materials.
- o) Unless otherwise provided in the Agreement, the Contractor shall secure and pay for any permits and governmental fees, licenses and inspections necessary for proper execution and completion of the work which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded.
- p) The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the work.
- q) It is not the Contractor's responsibility to ascertain that the Agreement are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Agreement are at variance

therewith, the Contractor shall promptly notify the MassTech Project Engineer and MassTech in writing, and necessary changes shall be accomplished by appropriate modification. If the Contractor performs work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the MassTech Project Engineer and MassTech, the Contractor shall assume full responsibility for such work and shall bear the attributable costs.

- r) The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the work. The Contractor shall take reasonable precautions for safety. of, and shall provide reasonable protection to prevent damage, injury or loss to:- (i) employees on the work and other persons who may be affected thereby; (ii) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and (iii) other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property referred to in this subsection. If the damage or loss is due in whole or in part to the Contractor's failure to take required security precautions, the Contractor shall, subject to any reimbursement to which the Contractor is entitled under property insurance required by the Agreement, bear the cost.
- s) The Contractor shall erect and maintain, as required by existing conditions and performance of the work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazard.

**12. Indemnification and Insurance:**

- a) To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless MassTech and its successors and assigns, and all of its officers directors, lenders, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees from and against any and all claims, suits, actions, judgments, demands, losses, costs, attorney's fees, expenses, damages and liability to the extent caused by, resulting from, or arising out of (i) any breach of this Agreement or false representation of Contractor under this Agreement, (ii) any negligent acts or omissions or reckless or intentional misconduct of Contractor or any of Contractor's agents, officers, directors, employees or subcontractors, or (iii) claims for tangible personal property damage, bodily injury or death resulting from Contractor's actions or inactions under this Agreement.
- b) Contractor shall promptly advise MassTech in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and the Contractor, at Contractor's expense, shall assume on behalf of MassTech and conduct with due diligence and in good faith the defense of such action, proceeding or investigation, with counsel satisfactory to MassTech; provided, however, that MassTech shall have the right to be represented by advisory counsel of its own selection and at its own expense; and, provided, further, that if the defendants in any such action include both Contractor and MassTech, and if MassTech shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to, or inconsistent with, those available to Contractor, MassTech shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. The obligations of Contractor under this subsection shall survive the expiration of the Agreement.
- c) Contractor shall, at its own expense, procure and maintain in effect through the term of this Agreement insurance coverage for its activities under this Agreement of the type at the levels specified in this Section, which shall protect the Contractor and MassTech against all claims, losses or expenses resulting from alleged, adjudicated or statutory liability for injury to persons or damage to property arising out of or in connection with the Contractor's performance of the work. The insurance required by this Section shall include all major divisions of coverage, and shall be on a comprehensive general basis

including Premises and Operations (including-C-U), Owner's and Contractor's Protective, Products and Completed Operations, and Owned, Nonowned, and Hired Motor Vehicles.

- d) All insurance shall be written on an occurrence basis, unless MassTech approves in writing coverage on a claims-made basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment. MassTech shall be added as an Additional Insured on all policies.
- e) The insurance required shall be written for not less than the following, or greater if required by law:
- i. Workers' Compensation: Statutory.
  - ii. Comprehensive General Liability including Contractors Liability, Contractual Liability; Completed Operations and Products Liability all on the occurrence basis with Personal Injury Coverage and broad form Property Damage. Remove the XCU exclusion relating to Explosion, Collapse and Underground Property Damage. Completed Operations Liability shall be kept in force for at least three years after the date of final completion of the work and MassTech shall be named as an Additional Insured (insurance industry form #CG 2037). The foregoing policy shall be primary and non-contributing with respect to any insurance carried by MassTech and any other additional insured.  
  
Per Occurrence - \$5,000,000  
Aggregate - \$5,000,000 (applied per job)
  - iii. Comprehensive Automobile Liability including non-ownership and hired car coverage as well as owned vehicles:  
  
Bodily Injury, Each Person - \$ 5,000,000  
Bodily Injury, Each Occurrence - \$5,000,000  
Property Damage, Each Occurrence - \$1,000,000
- f) Each policy of insurance required by this Agreement shall contain a provision endorsed to MassTech that the insurance provided therein may not be canceled or materially modified (e.g., non-renewed or reduced) without thirty (30) days prior written notice to MassTech.
- g) Each requirement for the Contractor's insurance contained in this Section shall also be required by the Contractor of every subcontractor. Such insurance coverage for subcontractors shall be applied per job. Amounts of coverage for subcontractors may, however, with MassTech's prior written approval, be less than the amount of coverage for the Contractor. Contractor shall require subcontractors to maintain CGL coverage for themselves and all additional insureds for the duration of the work and Completed Operations coverage for itself and each additional insured for a period of at least three (3) years after the date of final completion of the work.
- h) Contractor shall provide MassTech, upon request, with certificates satisfactory to MassTech concerning the effectiveness and the terms of the insurance required by this Agreement. MassTech shall be an additional insured on such policy or policies and shall be provided coverage at least as broad as the coverage provided to the named insured. MassTech may also request the Contractor to provide it with copies of the actual policies for its review. Failure to provide and continue in force any insurance required by this Agreement shall be deemed a material breach of this Agreement for which MassTech, at its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.

- i) Any increase in limit of liability, or any type of insurance not described above, which the Contractor requires for its own protection or to comply with any statute, shall be its own responsibility and at its own expense. Should the Contractor obtain any increase in limits of liability or any type of insurance not described herein, except where MassTech specifically agrees in writing in advance to pay the premiums, the cost shall be met by the Contractor. It shall be the responsibility of the Contractor to obtain any additional insurance required.
- j) The carrying of any of the insurance required hereunder shall not be interpreted as relieving the Contractor of any responsibility to MassTech. The Contractor shall assist and cooperate with any insurance company in the adjustment or litigation of all claims arising under this Agreement.

13. **Performance Bond and Payment Bond:**

- t) MassTech shall have the right to require the Contractor to furnish bonds covering faithful performance of the Agreement and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Agreement on the date of Execution of the Agreement. If required, Contractor, and each subcontractor designated by MassTech, shall furnish to MassTech, and keep in force during the term of the Agreement, performance and labor and material payment bonds guarantying that Contractor and any such subcontractor will perform their respective obligations under the Agreement and will pay for all labor and materials furnished for the work. Such bonds shall be issued in a form and by a surety reasonably acceptable to MassTech, shall be submitted to MassTech for approval as to form, shall name MassTech and its lender as obligees, and shall be in an amount equal to 100 percent of the Contract Sum (as it may be adjusted from time to time pursuant to the Agreement). Contractor shall deliver the executed, approved bonds to MassTech within seven days after execution of this Agreement. The premium and any and all other costs of all bonds required under this Section shall be included in the Contract Sum.
- u) Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

14. **Ownership of Intellectual Property:**

- a) Unless provided otherwise by law or by MassTech in a separate written statement signed by its Executive Director, ownership and possession of all information, data, reports, computer programs, drawings, documents, designs, models, inventions, equipment, and any other documentation, product of tangible materials authored or prepared, in whole or in part, or purchased, obtained or created by Contractor pursuant to this Agreement (collectively, the "Materials"), other than Contractor's administrative communications, records, files, and working papers relating to this Agreement, are the sole property of, and shall vest in, MassTech, as "works made for hire" or otherwise. MassTech will own the exclusive rights to and in all Materials prepared and produced by Contractor pursuant to this Agreement, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and MassTech will have the exclusive, unlimited and unrestricted right to publish, reproduce, distribute, transmit and publicly display all Materials prepared by Contractor. MassTech shall retain exclusive intellectual property rights in all graphics and text provided to Contractor by MassTech for incorporation into final Materials prepared by Contractor. Contractor shall use graphics and text provided by MassTech for the sole purpose of fulfilling contractual obligations created by this Agreement.
- b) Contractor shall, during the term of this Agreement and at any time thereafter, fully cooperate with MassTech and its attorneys and agents in the preparation and filing of all papers and other documents as may be required to perfect the interest of MassTech (or its designee(s)) in and to all Materials. Without limiting the foregoing, Contractor shall, at

the request and cost of MassTech (or its designee(s)), sign, execute, make and do all such deeds, documents, acts and things as MassTech and its duly authorized agents may reasonably require, including, without limitation:

- i) to apply for, obtain and vest in the name of MassTech alone (unless MassTech otherwise directs) letters patent, copyrights, trademarks or other legal rights or analogous protection in the United States and in any and all other countries throughout the world with respect to Materials, and, when so obtained or vested, to assign, renew and restore the same; and
- ii) to defend any judicial, opposition, or other proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright, trademark or other legal right or analogous protection.

15. **Assignment:** MassTech may assign its rights and obligations under this Agreement to any Person who succeeds to all or any portion of MassTech's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns.
16. **Conflicts of Interest:** Contractor acknowledges the application of the Massachusetts Conflict of Interest Law (M.G.L. c.268A) to the subject matter of this Agreement and that Contractor's personnel, and Contractor's subcontractor's personnel, if any, may be considered "state employees" and thus may be subject to the provisions of such law. Contractor represents and warrants that it is, and agrees that, for the duration of the term of this Agreement, it and its subcontractors, if any, shall remain in full compliance with the Massachusetts Conflict of Interest Law.
17. **Record Keeping, Audit, and Inspection of Records:** Contractor shall maintain books, records and other compilations of data pertaining to its activities under this Agreement to the extent and in such detail as shall properly substantiate claims for payment and Contractor's performance of its duties under the Agreement. All such records shall be kept for a period of not less than seven (7) years or for such longer period as is specified by MassTech (the "Retention Period"). The Retention Period starts on the first day after final payment under this Agreement is made. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MassTech, the Commonwealth and their respective duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of Contractor which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not permitted under this Agreement, then Contractor shall refund to MassTech the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand.
18. **Sensitive Information; Publicity:**
  - a) Contractor, as well as other third parties interacting with MassTech (collectively, the "Holding Party") may receive, have access to or create confidential, proprietary or otherwise sensitive information regarding MassTech, its activities, its employees and/or third parties, such as applicants, consultants, grantees, recipients or respondents under MassTech programs, which information is not generally known by or disseminated to the public as a matter of course. Such information is sometimes referred to as "Sensitive Information." MassTech expects all Holding Parties to maintain the highest degree of professionalism, integrity and propriety with respect to Sensitive Information at all times. Because the relevant legal requirements and the nature and scope of the information in question can create uncertainty, Holding Parties are urged to confer with MassTech's General Counsel if they have any questions about confidentiality, the scope or proper

treatment of Sensitive Information, or MassTech's policies with respect to such topics. It should be noted that the obligations under these policies continue even after this Agreement is terminated.

- b) Concerning work hereunder, Contractor shall get written consent from MassTech prior to issuing press releases, announcing events, or posting any signs or media, and shall coordinate with MassTech to plan for any news conferences. In any media produced by Contractor, Contractor will not represent that positions taken or advanced by it represent the opinion or position of MassTech.

19. **Public Records:**

As a public entity, MassTech is subject to the Massachusetts Public Records Law (set forth at Mass. Gen. Laws ch. 66) and thus all documents and other materials made or received by MassTech and/or its employees are subject to public disclosure. Contractor should not submit any information to MassTech that it does not want publically disclosed, and should assume that all submissions are subject to public disclosure without any prior notice, even if marked confidential. If Contractor wishes to have MassTech treat certain information or documentation as confidential, Contractor must submit a written request to MassTech's General Counsel specifying the type of information that Contractor wishes to be treated as confidential along with a detailed explanation of the statutory exemption(s) from the Public Records Law. MassTech's General Counsel is the sole authority within MassTech for making determinations on the applicability and/or assertion of an exemption to the Public Records Law.

20. **Claims and Disputes, Choice of Law and Forum; Equitable Relief:**

- a) It is the mutual expectation of MassTech and the Contractor that each party will utilize best efforts to resolve in a fair, equitable, efficient, and amicable manner any claims and other disputes that may arise out of or relate to the work, including, but not limited to, adjustment or interpretation of the contract terms, payment of money and extension of time.
- b) This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to the conflict of laws principles thereof. All legal actions arising out of or relating to this Agreement shall be commenced and maintained in a state or federal court sitting in the Commonwealth. By execution and delivery of this Agreement, each of the parties accepts for such party, generally, exclusively and unconditionally, the jurisdiction of said courts. This Section shall not be construed to limit any other legal rights of the parties.
- c) Contractor acknowledges and agrees that any breach or threatened breach of this Agreement by Contractor will result in substantial, continuing and irreparable damage to MassTech. Therefore, in addition to any other remedy that may be available to MassTech, MassTech will be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach by Contractor of the terms of this Agreement.

21. **Limitation of Liability:** MassTech shall be liable only to the extent of its interest in the project; and no officer, director, partner, agent or employee of MassTech (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable with respect to this Agreement or the work. Each subcontract shall include the foregoing limitation, which shall be effective if MassTech ever succeeds to the Contractor's rights and obligations under a subcontract.

22. **Amendments and Waivers:** No amendment to or modification of this Agreement (including any work order), and no waiver of any provision hereof, shall be effective unless the same shall be in writing and shall be signed by each of the parties hereto. Any waiver by MassTech of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in

any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

- 23. **Severability:** Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.
- 24. **Binding Effect; Benefit; Entire Agreement and Attachments:** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the parties hereto, and no Person shall be regarded as a third party beneficiary of this Agreement. This Agreement embodies the entire understanding and agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. Furthermore, neither Contractor's nor any of its subcontractors' provision of services under this Agreement implies, establishes or otherwise creates any rights or expectations of additional contracts with MassTech, whether related or unrelated to the subject matter of this Agreement. The following (together with all exhibits, schedules and attachments thereto) are hereby incorporated into this Agreement by reference:
  - a) Attachment A – Project Scope of work and Specifications
  - b) Attachment B – Contract Sum (Including Unit Prices)
  - c) Attachment C – List of Agreement and Plans
- 25. **Headings:** The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.
- 26. **Counterparts:** This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

**The Massachusetts Technology Park Corporation  
d/b/a Massachusetts Technology Collaborative**

**ICMPartnerName**

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

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

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

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

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

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

**Federal Tax ID No.:** \_\_\_\_\_

**Attachment A**

**Project Scope of work and Specifications**

**Attachment B**

**Contract Sum (including unit prices)**

**Attachment C**

**List of Agreement and Plans**